143

TRANSCRIPT OF RECORD

152033

Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 24, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Fifth Circuit	a	1
Caption (omitted in printing)	4	
Record from D. C. U. S., Southern Texas	1	1
Præcipe for transcript of record	1	1
Caption (omitted in printing)	4	
Libel	4	2
Answer of claimant	9	4
Claimant's bond to abide decree	12	6
Respondent's motion for finding and judgment	14	6
Findings of fact and conclusions of law under Admiralty Rule 46½	15	7
Final decree	18	9
Petition for appeal	20	10
Order allowing appeal	22	10
Assignments of error	24	11
Consent of all parties to hearing of case at New Orleans, La., instead of at Fort Worth, Texas	27	12
Stipulation as to findings of fact	29	13
Clerk's certificate (omitted in printing)	31	
Minute entry of submission	33	14
Opinion, Foster, J.	34	14
Judgment	39	18
Motion and order staying mandate	40	19
Clerk's certificate	42	20
Order allowing certiorari	43	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1936.

—8320-C

[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Admiralty. No. 316

UNITED STATES OF AMERICA

vs.

S. S. SANTOS MARU, Her Engines, Tackle, Etc.

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed December 6, 1935

To the Honorable United States District Clerk for the Southern District of Texas:

You will please make up the record to be transmitted to the United States Circuit Court of Appeals, for the Fifth Circuit, which shall contain:

1. Præcipe.
2. Libel.
3. Claimant's Bond to Abide Decree.
4. Answer to Claimant Respondent.
5. Respondent's Motion for Finding and Judgment.
6. Findings of Fact and Conclusions of Law under Admiralty Rule 46½.
7. Final Decree.

[fols. 2 & 3] 8. Notice of Appeal with Acceptance of Service Thereon.

9. Petition for Appeal.
10. Order Allowing Appeal.
11. Assignment of Errors.
12. Consent of all Parties to hearing of case at New Orleans, Louisiana, instead of Fort Worth, Texas.
13. Stipulation as to Finding of Facts.
14. Certificate of Clerk.

Douglas W. McGregor, United States Attorney.
Brian S. Oden, Assistant United States Attorney.

I hereby certify that copy of the foregoing præcipe was served on Royston & Rayzor, Houston, Texas, Proctors for Respondent, this the 6th day of December, 1935.

Brian S. Odem, Assistant United States Attorney.

Service of receipt of copy of this præcipe acknowledged this 6th day of December, 1935.

Royston & Rayzor, Proctors for Respondent.

[File endorsement omitted.]

[fol. 4] [Caption omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

LIBEL—Filed January 11, 1935

[fol. 5] Now comes the United States of America, by Brian S. Odem, Assistant United States Attorney in and for the Southern District of Texas, on behalf of the United States of America, a sovereign body politic, and files this libel against the Steamship "Santos Maru," her engines, boilers, and machinery, now lying in port at Houston, Texas, district aforesaid, same being brought upon the suggestion of the Attorney General of the United States at the request of the Commissioner General of Immigration of the United States of America, and, for cause, represents unto the Court as follows:

I

That the S. S. "Santos Maru" belongs to the Osaka Shosen Kaisha Line, their agent being the Gulf Shipping Company, Galveston, Texas, and that on or about the nineteenth day of June, 1932, the owners, masters, officers and agents of the S. S. "Santos Maru," in Galveston County, Texas, within the maritime jurisdiction of this Court, circuit, district and division aforesaid, violated Section 146, Title 8, United States Code Annotated; that is to say, that the S. S. "Santos Maru" being in territorial waters of the United States and within the jurisdiction of this Court in Galveston County, Texas, had on board one Salvatore

Sprovieri, an alien passenger en route from Brazil to Japan, who was not then entitled to enter the United States of America at any time or place other than as designated by immigration officers of the United States; that the said owners, masters, officers and agents of the S. S. "Santos Maru" had on or about the eleventh of June, 1932, been duly and properly notified in writing, as provided by law, to detain on board for all United States ports the said Salvatore Sprovieri; that notwithstanding said notice, the owners, masters, officers and agents of the S. S. "Santos [fol. 6] Maru" did not take the necessary and proper precautions in the premises to detain the said Salvatore Sprovieri on board said S. S. "Santos Maru" and that he was thereby negligently permitted by the aforesaid owners, masters, officers and agents to enter and land in the United States of America at Galveston, Texas, on or about the nineteenth day of June, 1932, the same being at a time and place not designated by the Immigration Officers of the United States of America.

II

The said alien, Salvatore Sprovieri, at the time of landing in the United States of America had no right to enter and land in the United States of America in the manner aforesaid, and the owners, masters, officers and agents of the S. S. "Santos Maru," which brought the alien Salvatore Sprovieri to the United States, did not present the said Salvatore Sprovieri to the Immigration Authorities of the United States at the time and place designated by the Immigration officers of the United States.

III

That in the opinion of the Secretary of Labor, it has been found impractical and inconvenient to proceed against the masters, owners, officers and agents of the S. S. "Santos Maru" in criminal proceedings for the violation aforesaid.

IV

That by reason of all the foregoing allegations, the owners, masters, officers and agents of the S. S. "Santos Maru" are liable to the United States for a penalty of One Thou- [fol. 7] sand Dollars ($1,000.00); that said penalty is now owing and unpaid.

V

That by reason of all the foregoing allegations, such penalty of One Thousand Dollars, now due and owing to the United States, is a lien upon the S. S. "Santos Maru," whose owners, masters, officers and agents had violated the provisions of Section 146, Title 8, United States Code annotated in the manner and form aforesaid.

VI

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said S. S. "Santos Maru"; that the Court issue its warrant of seizure for the said S. S. "Santos Maru" and that monition issue and that upon final hearing herein the United States have its decree for its debt and penalty of One Thousand Dollars ($1,000.00) and that the S. S. "Santos Maru," her engines, boilers and machinery, be forfeited to the United States or sold, as the law directs, to satisfy its lien against said S. S. "Santos Maru."

Brian S. Odem, Assistant United States Attorney.

[fol. 8] *Duly sworn to by Brian S. Odem. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CLAIMANT-RESPONDENT—Filed January 23, 1935

To the Honorable Judges of said Court:

The answer of Osaka Shosen Kaisha Line, claimant of the Steamship "Santos Maru" by their agent the Gulf Shipping Company, Houston, Texas, to the libel of the United States of America against the ship "Santos Maru,"

her engines, tackle, etc., for a penalty under Section 146, Title 8, United States Code Annotated, alleges as follows:

I

The claimant is not in possession of sufficient information to answer the first article of said libel, and therefore claim-
[fol. 10] ant prays that libelant be put to strict proof of the allegations therein contained.

II

Claimant is not possessed of sufficient information to answer the second article of said libel and therefore again prays that libelant be put to strict proof of the allegations contained in said second article.

III

By way of special exception to the third article of said libel, claimant urges that said third article is defective and merely pleads a conclusion, and claimant respectfully requests that this Honorable Court require libelant to set forth the facts upon the basis of which the Secretary of Labor formed his opinion that it was impractical and inconvenient to proceed against the master, owners, officers and agents of the S/S Santos Maru in criminal proceedings for the alleged violation.

IV

Claimant denies the allegation of the fourth article of said libel with respect to the liability of the S/S Santos Maru for the penalty therein alleged, through claimant admits the alleged penalty is unpaid.

V

Claimant admits the jurisdiction of this Honorable Court and denies the other allegations contained in article 5 of said libel.

[fol. 11] Wherefore, premises considered, the claimant-respondent prays that the libel may be dismissed with costs and for such other and further relief as may be just.

Royston & Razor, Proctors for Claimant-Respondent.

Duly sworn to by J. Newton Rayzor. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLAIMANT'S BOND TO ABIDE DECREE—Filed January 15, 1935

Whereas a libel was filed in this Court, on the 12th day of January, in the year of our Lord, one thousand nine hundred and thirty-five, by United States of America against the S. S. Santos Maru, her engines, tackle, etc., for the reasons and causes in said libel mentioned, and a claim has been filed by Osaka Shosen Kaisha and the said claimant, and Maryland Casualty Co., his surety, the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimant, or his surety, execution may issue against their goods, chattels and lands, for the sum of One Thousand Dollars ($1,000.00),

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of One Thousand Dollars ($1,000.00), conditioned that the claimant above named shall abide by and pay the money awarded by the final decree, including costs of court, ren-
[fol. 13] dered in the cause by the Court or in case of appeal by the Appellate Court.

Osaka Shosen Kaisha, by T. Accasawa, Master, S. S. Santos Maru. Maryland Casualty Co., by Willard V. Jones, Attorney-in-fact. (Seal.)

Taken and Acknowledged, this 13th day of January, 1935, before me. John R. Brown, Notary Public in and for Harris County, State of Texas. (Seal.)

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONDENT'S MOTION FOR FINDING AND JUDGMENT—Filed June 21, 1935

To the Honorable Judge of said Court:

Now comes the respondent in the above entitled and numbered cause, after the conclusion of the evidence submitted

by libellant herein, and respectfully calling to the attention of the Honorable Court its demurrer to the evidence of the libellant, and expressly waiving its right within the time granted by the Court to present evidence in its own behalf, the respondent herein moves the Honorable Court for a finding and judgment in its favor, and that it have judgment in its behalf, together with a cancellation of the release bond herein previously given.

Royston & Rayzor, Proctors for Respondent.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER ADMIRALTY RULE 46½—Filed August 1, 1935

[fol. 16] Statement of the Case

This is a suit by the United States of America against Respondent under Section 146, Title 8, United States Code Annotated, to recover a penalty of $1,000 for allowing Salvatore Sprovieri, an alien passenger, to land in the United States.

The Facts

(a) The Steamship "Santos Maru" belongs to the Osaka Shosen Kaisha Line, and arrived at the port of New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board. Such alien passenger was not bound for the United States and not entitled to enter the United States, but was en route from Brazil to Japan.

(b) Upon the arrival of such Steamship at New Orleans, the Immigration Officers there issued an Order in writing to the Steamship to hold the alien on board at all ports of the United States at which such Steamship might touch. This Order was duly served upon the Officers of the Steamship.

(c) On June 19, 1932, said Steamship arrived at the port of Galveston, Texas, in this Division and District, and the

said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law.

(d) Such Steamship Officers notified the United States. [fol. 17] Immigration Authorities of the escape of the said alien passenger, but such Steamship sailed before his arrest.

(e) Later such alien passenger was arrested in Galveston, Texas, and deported on another vessel of said line, and thereafter notice was given such Steamship Line of the intention of the Government to proceed against it and the "Santos Maru" for violation of said Section 146.

(f) It being in the opinion of the Secretary of Labor impractical and inconvenient to prosecute the matter criminally, this suit has been instituted under such Section 146 to recover a penalty of $1,000.

Conclusions of Law

1. This alien passenger was not bound for the United States, but was en route from Brazil to Japan, and under Taylor v. United States, 207 U. S. 120, 52 L. Ed. 130 Moffitt v. United States, 128 Fed. 375, 63 C. C. A. 117 (9 C. C. A. 1904), The President Adams (Dollar Steamship Line vs. Elting), 51 Fed. (2d) 1035, 1931 A. M. C. 1509 (2 C. C. A. 1931), The Alfonso XIII, etc., 53 Fed. (2d) 124 (S. D. New York 1931), and The Habana, etc., 63 Fed. (2d) 812 (2 C. C. A. 1933), Respondent is not liable.

Judgment for Respondent.

T. M. Kennerly, United States District Judge.

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Admiralty. No. 316

UNITED STATES OF AMERICA

versus

S/S SANTOS MARU, Her Engines, Boilers, Tackle, etc.; OSAKA SHOSEN KAISHA LINE, Claimant; MARYLAND CASUALTY COMPANY, Surety

FINAL DECREE—Filed August 28, 1935

The above entitled and numbered cause having come on for hearing in regular and due course, and the court having considered the pleadings, the evidence and the argument of proctors for libellant and claimant, and the court being of the opinion that the libel of the United States of America should be dismissed with prejudice;

It is, therefore, Ordered, Adjudged and Decreed by the Court, upon motion of Messrs. Royston and Rayzor, proctors for claimant, that the libel of the United States of [fol. 19] America should be, and the same hereby is, in all things dismissed with prejudice; the claimant, and its surety being in all things hereby relieved and discharged of all liability hereunder upon the payment by claimant or its surety of all costs by it incurred.

Done at Houston, Texas, this 27th day of August, A. D. 1935.

T. M. Kennerly, Judge.

Approved as to form: Royston & Rayzor, Proctors for Claimant. Douglas W. McGregor, United States Attorney for the Southern District of Texas, Proctor for Libellant.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed November 7, 1935

To the Honorable T. M. Kennerly, United States District Judge:

The above named libellant, United States of America, feeling aggrieved by the final decree of the Court filed herein, on August 28, 1935, in the above styled and numbered cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons set out in the Assignment of Errors filed herein and herewith and prays that its appeal be allowed and citation issued, as provided by law; and that a transcript of the record and proceedings upon which said decree was based be duly authenticated and sent to the United States Circuit Court of Appeals for the Fifth Circuit.

[fol. 21] Libellant further prays that a proper order relating to security of this appeal be entered.

Douglas W. McGregor, Brian S. Odem, Proctors for Libellant, United States of America.

[File endorsement omitted.]

[fols. 22 & 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 7, 1935

On this 7th day of November, 1935, came on to be heard the petition of libellant for appeal herein, and the Court being of the opinion that the same ought to be allowed, it is hereby ordered that an appeal be allowed from the decree entered herein in the above styled and numbered cause to the United States Circuit Court of Appeals for the Fifth Circuit, and that a certified transcript of the pleadings, stipulations and proceedings herein be transmitted to the

United States Circuit Court of Appeals for the Fifth Circuit.

It appearing that this appeal is by the United States of America no bond on appeal is required.

T. M. Kennerly, Judge.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Nov. 7, 1935

Now comes the United States of America, libellant and appellant in the above entitled and numbered cause, and files the following assignments of error on which, among others, it will rely on appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the decree rendered herein, which became final on August 28, 1935:

I

The Court erred in finding as a fact that the alien passenger Salvatore Sprovieri was, in fact, en route from Brazil to Japan.

II

The Court erred in failing to find as a fact that the alien Salvatore Sprovieri was bound for the United States and was not entitled to enter the United States.

[fol. 25]

III

The Court erred in concluding as a matter of law that the alien Salvatore Sprovieri was en route to Japan, and not bound for the United States.

IV

The Court erred in finding as a conclusion of law that Section 146, Title 8, United States Code Annotated, the section under which the proceeding was brought, is not applicable to "through passengers".

V

The Court erred in concluding as a matter of law that claimant or respondent is not liable under the provisions of Section 146, Title 8, United States Code Annotated, for the penalty provided therein.

Wherefore, by reason of the many prejudicial errors committed against libellant by the Honorable Trial Court, as hereinabove shown and assigned, and other errors apparent upon the face of the record herein, the appellant, United States of America, prays that the final decree heretofore rendered against it be reversed and the cause remanded for proper action in accordance with the order of this appellate court, and that justice be done.

Douglas W. McGregor, Brian S. Odem, Proctors for Libellant.

[fol. 26] [File endorsement omitted.]

[fol. 27] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted]

CONSENT OF ALL PARTIES TO HEARING OF CASE AT NEW ORLEANS, LA., INSTEAD OF FORT WORTH, TEXAS—Filed Nov. 27, 1935

To the Honorable Circuit Court of Appeals:

All parties to the above cause agree to the submission of this cause at New Orleans, Louisiana, instead of at Fort Worth, Texas.

Douglas W. McGregor, United States Attorney, Attorney for Appellant. Royston & Rayzor, Messrs. Royston & Rayzor, Attorneys for Appellees.

[fol. 28] [File endorsement omitted.]

[fols. 29 & 30] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted]

STIPULATION AS TO FINDINGS OF FACT—Filed Nov. 27, 1935

To the Honorable Circuit Court of Appeals:

All parties to the above cause hereby agree and stipulate that for the purposes of appeal herein the findings of fact made by the Honorable District Court herein shall be taken as true.

Douglas W. McGregor, United States Attorney, Attorney for Appellant. Royston & Rayzor, Messrs. Royston & Rayzor, Attorneys for Appellees, by Robert Eikel, Jr.

[File endorsement omitted.]

[fol. 31] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 32] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 33] SUBMISSION OF CASE ON RECORD AND BRIEFS

Extract from the Minutes of June 1, 1936

No. 7978

UNITED STATES OF AMERICA

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al.

On this day this cause was called, and, upon the joint request of counsel, was taken under submission by the Court upon the record and briefs on file.

[fol. 34] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7978

UNITED STATES OF AMERICA, Appellant,

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU," et al., Appellees

Appeal from the District Court of the United States for the Southern District of Texas

(June 10, 1936)

Before Foster, Sibley and Hutcheson, Circuit Judges

OPINION OF THE COURT—Filed June 10, 1936

FOSTER, Circuit Judge:

This is an appeal from a decree dismissing a libel in rem filed by the United States against the steamship Santos

Maru, to recover a penalty of $1,000.00, for negligence of the master and officers in allowing an alien to land in the United States, in violation of the Act of February 5, 1917, [fol. 35] § 10, amended by Act of May 26, 1924, § 27. (T. 8 U. S. C. A. § 146).*

The facts are not in dispute. The vessel arrived at New Orleans on June 11, 1932, in the course of a voyage from Brazil to Japan, with Salvatore Sprovieri, an alien, on board as a through passenger. An order was issued in writing by the immigration authorities at New Orleans and served on the officers of the ship, directing them to

---

* "§ 146. Prevention of unauthorized landing of aliens; prima facie proof of landing. (a) It shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 102 of this title, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court."

"(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers. (Feb. 5, 1917, c. 29, § 10, 39 Stat. 881; May 26, 1924, c. 190, § 27, 43 Stat. 167.)"

hold the said alien on board at all ports of the United States at which the ship might touch. On June 19, 1932, the vessel arrived at Galveston and, through the negligence of her officers and crew, the alien was allowed to escape and land in the United States, without permission of the immigration authorities and in violation of law. The alien was subsequently arrested in Galveston and deported on another vessel of the same line. The Secretary of Labor was of opinion that it would be impractical and inconvenient to prosecute the matter criminally. Notice was given [fol. 36] the steamship line of the intention of the Government to proceed against it and the Santos Maru for violation of the section. The libel was then filed and the ship attached. Subsequently she was released on bond.

The District Court in dismissing the libel relied on the following authorities. Taylor vs. United States, 207 U. S. 120; Moffitt vs. United States, 128 Fed. 375; Dollar S. S. Line vs. Elting, 51 F. (2d) 1035; The Alfonso XIII, 53 F. (2d) 124; The Habana, 63 F. (2d) 812.

The section relied on to sustain the libel first appeared in its present form in the Act of February 5, 1917, § 10. The amendment of May 26, 1924, § 27, made no substantial change in the law. (T. 8 U. S. C. A. § 146.) Taylor vs. United States was decided in November, 1907, ten years before the present act was adopted, and arose under the immigration act of March 3, 1903, § 18. So far as is necessary to quote, that law provided: "That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers." Violation was punishable by fine and imprisonment. The Taylor case involved a criminal prosecution, based on the desertion of seamen who had been given shore leave. The Supreme Court construed the phrase in the act "bringing an alien to the United States" to mean "transportation with intent to leave in the United States" and held that an intent on the part of the owners and officers of the vessel that the alien transported should enter the United States was necessary before the law was violated, consequently it did not apply to the crew of a vessel.

The present act adds the phrase, "or providing the means for an alien to come to the United States," after the phrase

[fol. 37] "bringing an alien to the United States." The act is somewhat ambiguous an deals with transportation by land as well as by sea but Congress was endeavoring to solve an ever present problem in a practical way. If through passengers on a ship could leave her at a port of the United States at will, that would be an easy way to evade the immigration laws.

The Commissioner General of Immigration, under the direction of the Secretary of Labor, is authorized to adopt rules and regulations for carrying out the provisions of the immigration laws. T. 8 U. S. C. A. § 102. Under that authority he has established a rule that alien through passengers on vessels touching at ports of the United States may land temporarily from the vessel, for the limited time she is in port, without a vised passport, if the examining immigration officer is satisfied he will depart on the ship. If the immigration officer is not so satisfied he shall notify the master of the vessel in writing that the privilege is denied the alien and of the provisions of the law. Rule 3 (6) (H) Im. Rules, Jan. 1, 1930, G. O. 201, Mar. 3, 1933. That procedure was followed in this case and permission to land was denied.

It is usual to permit through passengers to have shore leave, while the vessel is in port, but it is elementary that immigration officers, acting under authority of law, have authority to deny this privilege. It is necessary and proper that in exercising their discretion immigration officers boarding a vessel to examine the persons on her should be guided by uniform rules. The master of the vessel had authority to enforce the order, even by locking up the passenger, if necessary. Thereafter, negligence in allowing the alien to escape was inexcusable. The rule above referred to is reasonable and a valid exercise of the authority vested in the Commissioner General of Immigration.

[fol. 38] We consider that when a vessel arrives at a port of the United States with an alien through passenger on board, who unlawfully lands in the country, the ship has provided a means for the alien to come to the United States, within the meaning of the law. It is not necessary to show that the owners of the ship intended that the alien should land in the United States before the penalty for negligently permitting him to land may be imposed. Under the pres-

ent law, on the facts presented in this case we do not consider that Taylor vs. United States controls.

The other authorities relied on by the District Court are not in point, except the case of The Habana, 63 F. (2d) 812, the ruling in which is directly contrary to our views just expressed. With all due respect, we must decline to follow that case.

Since the statute creates a lien on the vessel for the penalty incurred through negligence of the officers and the action is in rem, no question arises as to the liability of the Santos Maru. The judgment is reversed and the cause remanded with instructions to enter judgment for the United States.

[fol. 39] JUDGMENT

Extract from the Minutes of June 10th, 1936

No. 7978

UNITED STATES OF AMERICA

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with instructions to enter judgment for the United States.

[fol. 40] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7978

UNITED STATES OF AMERICA, Appellant,

vs.

OSAKA SHOSEN KAISHA LINE, Claimant of the SS. SANTOS MARU, et al., Appellees

MOTION AND ORDER STAYING MANDATE—Filed July 1, 1936

To the Honorable Judges of said Court:

Now comes Osaka Shosen Kaisha Line, claimant of the SS. Santos Maru, appellee in the above entitled and numbered cause, and respectfully shows to this Honorable Court that it intends to file forthwith its petition with the United States Supreme Court for writ of certiorari to this Honorable Court.

Wherefore, appellee Osaka Shosen Kaisha Line prays that the mandate herein be stayed pending the filing and determination of the petition for writ of certiorari.

(Signed) Royston & Rayzor, Attorneys for Appellees, by (Signed) Robt. Eikel.

[fol. 41] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7978

UNITED STATES OF AMERICA, Appellant,

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al., Appellees

On consideration of the application of the appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of

this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned ecrtificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 1st day of July, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 42] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 32 to 41 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7978, wherein United States of America is appellant and Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru", et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 31 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the city of New Orleans, Lousiana, in the Fifth Circuit, this 1st day of July, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,764. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 224. Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru," petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed July 24, 1936. Term No. 224, O. T., 1936.

(8320-C)

No. 224

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

OSAKA SHOSEN KAISHA LINE,
Claimant of the STEAMSHIP "SANTOS MARU",
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Fifth Circuit

---

J. NEWTON RAYZOR,
Attorney for Osaka Shosen Kaisha Line

INDEX TO PETITION

Page

Statement of Judgment Complained of..... 1

Statement of Material Facts..... 2

Holdings of Circuit Court of Appeals..... 2

Reasons Relied on for Allowance of Writ of Certiorari..... 3

INDEX TO BRIEF

Page

Opinion of Circuit Court of Appeals..... 7

Grounds of Jurisdiction 7

Brief Statement of the Facts 8

Summary of Argument 9

Argument 9

INDEX TO AUTHORITIES

Page

Bruce vs. Tobin, 245 U. S. 18, 38 S. Ct. 7, 62 L. Ed. 123 12

Hackfeld & Company vs. United States, 197 U. S. 442, 25 S. Ct. 456, 49 L. Ed. 826 ..... 14, 15

Heald vs. District of Columbia, 254 U. S. 20, 23; 41 S. Ct. 42, 65 L. Ed. 106 12

Iselin vs. United States, 270 U. S. 245, 46 S. Ct. 248, 70 L. Ed. 566 14

Louisville Cement Company vs. Interstate Commerce Commission, 246 U. S. 638, 644, 38 S. Ct. 408, 62 L. Ed. 914 12

Mason's U. S. C., Title 8, Sections 102, 138, 139, 144, 145, 146 147, 150, 154, 156, 163, 167, 171 ....3, 7, 8, 9, 10, 11, 13, 14, 15

Merritt vs. Cameron, 137 U. S. 542, 11 S. Ct. 174, 34 L. Ed. 772 ..14

Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130 ..... 3, 8, 9, 11, 12, 13, 14

The Abbotsford, 98 U. S. 440, 25 L. Ed. 168 14

The Alphonso XIII, etc., 53 Fed. (2d) 124 (S. D. N. Y., 1931) 12, 13

The Havana, etc., 63 F. (2d) 812 (CCA 2, 1933) 3, 12, 13

The Nanking, 290 F. 769 (CCA 9, 1923) 14

The President Adams (Dollar Steamship Lines vs. Elting) 51 F. (2d) 1035, 1931 AMC 1509 (CCA 2, 1931) 12

The Presidente Wilson, 56 F. (2d) 742 (CCA 2, 1932) 15

United States vs. Cerecedo Hermanos Y Compania, 209 U. S. 337, 28 S. Ct. 532, 52 L. Ed. 821 12

United States vs. SS Coamo, 267 U. S. 220, 45 S. Ct. 237, 69 L. Ed. 582 ..... 3, 10, 11, 13, 15

United States vs. Northern Pacific Railroad Company, 242 U. S. 190, 37 S. Ct. 22, 61 L. Ed. 240 15

United States vs. Wiltberger, 5 Wheat. 76, 92, 5 L. Ed. 37, 42 15

No._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

OSAKA SHOSEN KAISHA LINE,
Claimant of the STEAMSHIP "SANTOS MARU",
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent,

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Fifth Circuit

---

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Osaka Shosen Kaisha Line, respectfully presents its petition for a Writ of Certiorari addressed to the United States Circuit Court of Appeals, for the Fifth Circuit, to review a judgment of said Court reversing a judgment of the District Court for the Southern District of Texas in favor of Osaka Shosen Kaisha Line, petitioner herein, dismissing the libel of the United States of America, respondent herein, the case being remanded with instructions to enter judgment for the United States of America. (R., pp. 32-36). The judgment of the Circuit Court of Appeals was rendered on the 10th day of June, A. D., 1936. (R., p. 32).

SHORT STATEMENT OF FACTS

The Steamship "Santos Maru", belonging to the Osaka Shosen Kaisha Line, arrived at the port of New Orleans, Louisiana, on June 11th, 1932, having as a third class passenger one Salvatore Sprovieri, an alien en route from Brazil to Japan on a through ticket, with no visa entitling him to enter the United States. At New Orleans the immigration officers served upon the master an order in writing instructing him to detain all third class passengers aboard the vessel at all ports of the United States. On June 19, 1932, the third class passenger Salvatore Sprovieri escaped from the vessel, through the negligence of the officers and crew of said steamship the District Court found upon demurrer. The immigration authorities were notified of the escape by the agents of the vessel; the alien was subsequently arrested and deported upon another vessel of the petitioner.

The Secretary of Labor, considering it impracticable to proceed by criminal action, instituted this libel *in rem* under Sec. 146, Title 8, Mason's U. S. C., (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27) for failure to prevent the landing of the alien at a time and place other than that designated by the immigration authorities. (R., pp. 16-17.)

Upon demurrer, the District Court found the facts as outlined above and dismissed the libel. (R., pp. 14-19.)

The United States appealed to the Circuit Court of Appeals for the Fifth Circuit, and that Court, declining to follow the decisions of the Circuit Court of Appeals for the Second Circuit, reversed the holding of the lower court, remanding the case with instructions to enter judgment for libellant. (R., pp. 32-36.)

REASONS RELIED UPON FOR ALLOWANCE OF WRIT OF CERTIORARI

1. As the Circuit Court of Appeals for the Fifth Circuit acknowledges, its decision is directly in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in The Havana, etc., 63 F. (2d) 812 (CCA 2, 1933).

2. The decision of the Circuit Court of Appeals is probably in conflict with the decisions of this Honorable Court in Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, and United States vs. SS Coamo, 267 U. S. 220, 45 S. Ct. 237, 69 L. Ed. 582.

3. The extent of the powers of the immigration authorities under Section 146, Title 8, Mason's U. S. C., is a question of general importance which has not been but should be decided by this Honorable Court, the effect of the decision of the Circuit Court of Appeals being greatly to enlarge the powers of those authorities.

4. By its decision the Circuit Court of Appeals construed Section 146, Title 8, Mason's U. S. C., as granting to the immigration authorities the broad power of issuing orders to a master of a vessel to detain persons aboard the vessel and not to permit their landing in the United States, their escape to be at the peril of the vessel; the language of the section grants no such power, and it is a strained judicial enlargement of a highly penal statute to construe it as containing such a grant.

WHEREFORE, petitioner prays that a writ of certiorari may issue directed to the United States Circuit Court of Appeals for the Fifth Circuit, directing said Court to certify the whole record to this Court for a hearing and determination; and that upon a hearing

the judgment of the Circuit Court of Appeals may be reversed by this Honorable Court, and proper directions given for further relief and remedy in the premises as to this Honorable Court may seem proper and in conformity with law.

OSAKA SHOSEN KAISHA LINE,

By J. NEWTON RAYZOR.

J. Newton Rayzor

STATE OF TEXAS,
COUNTY OF HARRIS.

J. Newton Rayzor, being duly sworn, deposes and says: That he is the attorney for the petitioner herein, and has knowledge of this litigation and the matters set out in the petition; that the foregoing petition and the matters set forth are true to the best of his knowledge, information and belief.

J. NEWTON RAYZOR.

J. Newton Rayzor

Sworn to and subscribed before me this 18th day of July, A. D., 1936.

MRS. FLETA B. HANSCOM, *Notary Public in and for Harris County, Texas.*

I, J. Newton Rayzor, do hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to favorable consideration by this Honorable Court and is not filed for the purpose of delay.

J. NEWTON RAYZOR,

J. Newton Rayzor

Counsel for Petitioner.

NOTICE OF TIME OF SUBMISSION

The Respondent in the above cause, the United States, through its attorney the Solicitor General at Washington, D. C., will please take notice that the foregoing petition for a writ of certiorari will be submitted to the Supreme Court of the United States for decision at its court room, Supreme Court Building, Washington, D. C., forthwith from the date of this service.

Dated at Houston, Texas, July 18, 1936.

Yours respectfully,

J. NEWTON RAYZOR,
Counsel for Petitioner.

DUE PROOF OF NOTICE

I, J. Newton Rayzor, counsel for Petitioner, do hereby certify that service of the Petition, Record, and Brief herein was made upon the Solicitor General of the United States at Washington, D. C., by mailing to the Solicitor General a copy of the within petition and accompanying brief, and a copy of the record, by registered mail, return receipt requested, at the postoffice at Houston, Texas, on July 21, A. D., 1936, same being within ten days after the filing thereof.

J. Newton Rayzor

Sworn to and subscribed before me this 21st day of July, A. D., 1936.

Mrs. Fleta B. Hanna
Notary Public, Harris County, Texas

IN THE

Supreme Court of the United States

OSAKA SHOSEN KAISHA LINE,
Claimant of the STEAMSHIP "SANTOS MARU",
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent,

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

BRIEF OF PETITIONER

The opinion of the District Court appears in 1935 A. M. C. 1176; here in R., pp. 16-17.

The opinion of the Circuit Court of Appeals appears here in R., pp. 32-36.

GROUNDS OF JURISDICTION

The rulings of the United States Circuit Court of Appeals which we submit are erroneous and should be reviewed by this Court are as follows:

1. The holding that the immigration authorities have the power under Section 146, Title 8, Mason's U. S. C., to issue orders requiring the detention of aliens aboard the vessel without landing, and not merely the power to promulgate regulations designating times and places for the landing of aliens.

2. The holding that a regulation, made by the Commissioner General of Immigration under the general grant of power to promulgate regulations in accordance with the provisions of the Immigration Act contained in Sec. 102, Title 8, Mason's U. S. C., can have the force of law under Section 146 when not made in accordance with the terms of said Section 146.

3. The holding that Section 146 applies to the case of "through passengers", i. e., passengers being transported between foreign ports via an American port of call, the holding of the Circuit Court being contrary to the reasoning of Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, as well as decisions of the Circuit Court of Appeals of the Second Circuit.

4. The holding that the penal provisions of the Immigration Act can be enforced in cases not clearly within its terms.

BRIEF STATEMENT OF FACTS

The immigration authorities at New Orleans, Louisiana, on June 11, 1932, served upon the master of the steamship Santos Maru an order in writing instructing him to detain aboard the vessel at all American ports all third class passengers. Subsequently at Galveston, Texas, the third class passenger Salvatore Sprovieri escaped, through the negligence of the officers and crew of the vessel the District Court found. Sprovieri was an alien being transported from Brazil to Japan on a through ticket, with no visa entitling him to admission into the United States. The agent of the vessel reported his escape, and he was subsequently apprehended and deported on another vessel of your petitioner. The Secretary of Labor instituted this libel to recover a fine under Section 146, Title 8, Mason's U. S. C., (Section 10 of

the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27) for failure to prevent the landing of an alien at a time and place other than that designated by the immigration authorities. (R., pp. 16-17.)

SUMMARY OF ARGUMENT

First, your petitioner contends that Section 146 makes provision only for securing proper landing of aliens by compelling transportation agencies to present them only at designated times and places; the section gives no authority to prohibit entirely the entrance or landing of aliens, nor to issue detention orders.

Second, it is our contention that Section 146 does not apply to "through passengers" and makes no provision for the enforcement of administrative regulations respecting the handling of "through passengers".

Third, it is our contention that the penalties provided by Section 146 can be imposed only where the provisions of Section 146 have been violated; that there is no authority given in the Immigration Act or in Section 146 to make the penal provisions of Section 146 applicable to all infractions of administrative regulations, and that the entire character of the Immigration Act, as well as the general rule of law requiring a strict construction of penal statutes, speaks against such a general grant of power to the Commissioner General of Immigration.

1. Section 146, Title 8, Mason's U. S. C., under which the libel was brought, provides penalties for failure to observe regulations made concerning times and places of landing aliens, and gives no authority to the Commissioner General of Immigration to issue general orders of detention.

Section 146, Title 8, Mason's U. S. C., (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27) in substance provides as follows:

> "(a) It shall be the duty of every person . . . to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. . . . .

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers".

No mention is made in said Section 146, either in paragraph (a) or paragraph (b), of detention of an alien aboard a vessel or the issuance of orders compelling a master or agent so to detain an alien aboard a vessel. If there were any doubt at all about the meaning of paragraph (a) of the section, it would be resolved by paragraph (b), which clearly contemplates the designation of a time and place for landing by the immigration officers and does not contemplate the absolute prohibition of landing by those officers under this section.

That the Commissioner General himself is aware of the meaning of the section is shown by the order made in the case of United States vs. SS Coamo, 267 U. S. 220, 45 Sup. Ct. 237, 69 L. Ed. 582. In that case the master was ordered to present the two aliens concerned at Ellis Island. On his failure to do so this Honorable Court held the vessel liable for a fine of $1,000.00 for each alien.

As a contrast with the silence of Section 146, Title 8, Mason's U. S. C., with respect to the issuance of detention orders, Section 147 provides for the detention of aliens for observation and examination and provides that aliens shall be detained on board the vessel at the expense of such vessel as circumstances may require or justify; Section 154 provides for the deportation of aliens brought in in violation of law and provides penalties for failure to detain such aliens aboard a vessel when it is so ordered; Section 167 provides for the detention of alien seamen on board a vessel. Each of these sections

speaks clearly respecting the detention of aliens and the issuance of orders respecting such detention, in marked contrast with the complete silence of Section 146 respecting detention orders. In view of the specific provisions of these Sections and the silence of Section 146, it is submitted there can be no doubt that if Congress had intended detention orders to be issued under Section 146 that pertinent language to that end would have been used.

It is therefore submitted on this point that the language of the Act is clear and free from ambiguity and that the proper construction of the Act has received the tacit approval of this Court in the case of the United States vs. Coamo, *supra*.

2. Transporting a passenger to a foreign country on a through ticket via an American port of call is not "bringing an alien to the United States" within the meaning of Section 146, Title 8, Mason's U. S. C. (Section 10, Act of February 5, 1917, as amended by Act of May 26, 1924, Section 27).

The words of Section 146, Title 8, Mason's U. S. C., "bringing an alien to the United States" are first construed by this Honorable Court in Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, in which a unanimous court speaking through Mr. Justice Holmes said:

> "The reasoning is not long. The phrase which qualifies the whole section is 'bringing an alien to the United States'. It is only 'such' officers of 'such' vessels that are punished. 'Bringing to the United States', taken literally and nicely, means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back and merely as incident to employment on the instrument of transport."

This interpretation was followed in construing similar language of Section 145, of Title 8, Mason's U. S. C.,

by the Circuit Court of Appeals for the Second Circuit in The President Adams (Dollar Steamship Line vs. Elting), 51 F. (2d) 1035, 1931 AMC 1509 (1931), though it may well be noted here that the meaning of the words in that Section is made clearer by the heading, where the section is summarized by denominating it "bringing *in* aliens subject to disability."

More recently, on facts identical with those of the instant case, the Circuit Court of Appeals for the Second Circuit has reaffirmed its view in affirming the holding of the District Court in The Alphonso XIII, etc., 53 F. (2d) 124, on appeal styled The Havana, etc., 63 F. (2d) 812 (1933). In that case certain foreigners were being transported from Mexican ports to Spain by ports of call in the United States, and after issuance of orders to the masters to detain the aliens on board, the aliens escaped into the United States. The Circuit Court of Appeals held that the cases were ruled by the decision in The President Adams, *supra,* and that the repeated adoption by Congress of the section in question without material change following the interpretation given it in Taylor vs. United States, *supra,* brought the construction of the statute within the rule of those decisions which hold that where a statute has been so re-enacted it incorporates existing judicial interpretations, citing United States vs. Cerecedo Hermanos y Compania, 209 U. S. 337, 28 Sup. Ct. 532, 52 L. Ed. 821; Bruce vs. Tobin, 245 U. S. 18, 38 Sup. Ct. 7, 62 L. Ed. 123; Louisville Cement Company vs. Interstate Commerce Commission, 246 U. S. 638, 644, 38 Sup. Ct. 408, 62 L. Ed. 914; Heald vs. District of Columbia, 254 U. S. 20, 23, 41 Sup. Ct. 42, 65 L. Ed. 106.

In The Havana, *supra,* the contention made in the instant case and made the basis of the opinion of the court

below was also made, that is, that the amendment of Section 146 by the Act of 1924 avoided the effect of the decision in Taylor vs. United States, *supra,* and made clear Congress' intention to apply Section 146 to cases where an alien comes to the United States aboard a vessel even though he is travelling on a through ticket and the steamship company brings him to the United States only as incident to transporting him to a foreign country. Both the District Court and the Circuit Court rejected this contention, it being pointed out by the District Court that the amendment made was necessary to provide for the extension of the section to embrace toll roads and bridges as well as steamship companies. The District Court also pointed out that the notices served by the immigration officers were not in accordance with Section 146 because they were detention orders, not orders designating a time or place for landing of aliens as provided by the section.

Your petitioner respectfully submits to this Honorable Court that the careful consideration given the statute by the District Court in The Alphonso XIII, *supra,* and by the Circuit Court of Appeals for the Second Circuit, in The Havana, *supra,* has led to a correct interpretation of the statute by those courts, and that the opinions of this Honorable Court in Taylor vs. United States, *supra,* and United States vs. Coamo, *supra,* conclude the matter.

3. The Commissioner General has no power to make regulations independently of the Statute and has no power to issue orders under Section 14[illegible] except consistently therewith, and the penalties provided f[illegible] in Section 146 are provided only for violations of its provisions.

In the instant case the order made by the immigration officer was an order of detention, prohibiting the landing of the alien at any port of the United States, and

this order was not made as a rule or regulation respecting the time or place of landing of the alien. Since the order was not made in accordance with the terms of Section 146, it therefore did not have the force of law, and a failure to comply strictly with its terms is not punishable by libel brought under Section 146.

By Section 102, Title 8, Mason's U. S. C., the Comsioner General of Immigration is specifically empowered to establish rules and regulations only where such rules are "not inconsistent with law", were it necessary even to refer to the provisions of the statute when it is so clearly established law that an administrative official cannot make regulations which are not within the terms of the statute interpreted. Iselin vs. United States, 270 U. S. 245, 46 Sup. Ct. 248, 70 L. Ed. 566; Merritt vs. Cameron, 137 U. S. 542, 11 Sup. Ct. 174, 34 L. Ed. 772. Furthef, it is a well recognized rule of law that doubtful terms which have acquired through judicial interpretation a well understood legislative meaning are presumed to be used by the legislature in the sense determined by authoritative decisions. The Abbotsford, 98 U. S. 440, 25 L. Ed. 168; Hackfeld & Company vs. United States, 197 U. S. 442, 25 S. Ct. 456, 49 L. Ed. 826. Since the language interpreted in Taylor vs. United States, *supra*, has not been altered, the changes in the section being additions and not corrective amendments, it follows that both by the clear terms of the statute and by the established rules of law that the Commissioner General could not make regulations respecting "through passengers" under the grant of power contained in Section 146.

A reference to its provisions reveals that the Immigration Act is highly penal in character. Even due care to observe the provisions of the statute is insufficient to relieve a carrier from liability. The Nanking, 290 F. 769

(CCA 9, 1923). There is no general clause providing a penalty for violations of the various parts of the statute, but each part provides for its own penalty. Sections 138, 139, 144, 145, 146, 150, 154, 156, 163, 167, 171, Title 8, Mason's U. S. C.; United States vs. SS. Coamo, *supra*, The Presidente Wilson, 56 F. (2d) 742 (CCA 2, 1932). As a penal statute, the statute should be construed to apply only to cases coming plainly within its terms. United States vs. Northern Pacific Railroad Company, 242 U. S. 190, 37 S. Ct. 22, 61 L. Ed. 240.

An interpretation of the statute to uphold orders of detention under Section 146, as in this case, would make a vessel liable for double penalties whenever an alien escapes after a detention order is made, for the vessel would be liable under Section 146 for failure to present the alien at a proper time and place and would also be liable under the Section providing for the issuance of the detention order. Such a construction is opposed to the entire tenor of the Immigration Act, with its specific penalties for each particular offense. Further, if detention orders could be issued under Section 146, these orders would be unlimited in nature since that Section is absolute in terms. This leads to the preposterous conclusion that the other Sections of the Immigration Act are merely directory—regulations could be made by the authorities as they saw fit since they could prohibit any person they pleased from landing under Section 146.

In short, your petitioner herein respectfully submits that the case comes clearly within the rules laid down by Chief Justice Marshal in the case of United States vs. Wiltberger, 5 Wheat. 73, 5 L. Ed. 37, 92, quoted in Hackfeld & Company vs. United States, *supra*, as follows:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment."

Wherefore, petitioner prays that the judgment of the Circuit Court of Appeals herein be reversed and that the judgment of the District Court be affirmed and for such other relief as may be proper.

Respectfully submitted,

J. NEWTON RAYZOR,

Attorney for Osaka Shosen Kaisha Line.

FILE COPY

No. 224

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

OSAKA SHOSEN KAISHA LINE,
Claimant of the Steamship "SANTOS MARU",
Petitioner,

vs.

UNITED STATES OF AMERICA

BRIEF FOR PETITIONER

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

J. NEWTON RAYZOR,
ROBERT EIKEL, JR.,
Attorneys for Petitioner

ROBERT EIKEL, JR.,
of Counsel

INDEX TO BRIEF

	Page
Statement of the Case	1
Assigned Errors to be urged	3
Summary of Argument	4
Point 1	4
Point 2	10
Point 3	13
Proof of Service	18

CASE REPORTED

Opinion of District Court, Southern District of Texas:

1935 AMC 1176

R. 7-8

Opinion of Circuit Court of Appeals, Fifth Circuit:

84 Fed. (2d) 482

1936 AMC 1428

R. 14-18

INDEX TO AUTHORITIES

Page

The Abbotsford, 98 U. S. 440, 25 L. Ed. 168 14

The Alphonso XIII, etc., 53 Fed. (2d) 124 (S. D. N. Y., 1930) 11

Bruce vs. Tobin, 245 U. S. 18, 38 S. Ct. 7, 62 L. Ed. 123 11

Campbell vs. Galeno Chemical Co., 281 U. S. 599, 50 S. Ct. 412, 74 L. Ed. 1063 14

Hackfeld & Company vs. United States, 197 U. S. 442, 25 S. Ct. 456, 49 L. Ed. 826 14

The Havana, etc. 63 F. (2d) 812 (CCA 2, 1933) 2, 11

Hawaii vs. Mankichi, 190 U. S. 197, 212, 23 S. Ct. 787, 47 L. Ed. 1016, 12 Am. Crim. Rep. 465 6

Heald vs. District of Columbia, 254 U. S. 20, 23; 41 S. Ct. 42, 65 L. Ed. 106 11

Immigration Rules, January 1, 1930, Rule 3 (6) (H) 3, 4, 13

International Railroad Company vs. Davidson, 257 U. S. 506, 514, 42 S. Ct. 179, 66 L. Ed. 341 14

Iselin vs. United States, 270 U. S. 245, 46 S. Ct. 248, 70 L. Ed. 566 14

Louisville Cement Company vs. Interstate Commerce Commission, 246 U. S. 638, 644, 38 S. Ct. 408, 62 L. Ed. 914 11

Mason's U. S. C., Title 8:

Section 102 .....7, 14
Section 138 12
Section 139 12
Section 144 12
Section 145 .....10, 12
Section 146 .....2, 3, 4, 5, 10, 11, 12, 13, 15
Section 147 12
Section 150 12
Section 154 .....9, 12
Section 156 15
Section 163 12
Section 167 .....8, 12
Section 171 12
Section 180a 7

INDEX TO AUTHORITIES—Continued

Page

Merritt vs. Cameron, 137 U. S. 542, 11 S. Ct. 174, 34 L. Ed. 772 14

The Nanking, 290 F. 769 (CCA 9, 1923) 15

The President Adams (Dollar Steamship Line vs. Elting) 51 F. (2d) 1035, 1931 AMC 1509 (CCA 2, 1931) 10

The Presidente Wilson, 56 F (2d) 742 (CCA 2, 1932) 15

Smythe vs. Fiske, 23 Wall. 374, 380, 23 L. Ed. 47, 49 6

Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130 ..... 2, 10

United States vs. 200 Barrels of Whiskey, 95 U. S. 571, 24 L. Ed. 491 14

United States vs. Cerecedo Hermanos y Compania, 209 U. S. 337, 28 S. Ct. 532, 52 L. Ed. 821 11

United States vs. SS Coamo, 267 U. S. 220, 45 S. Ct. 237, 69 L. Ed. 582 9

United States vs. Katz, 271 U. S. 354, 46 S. Ct. 513, 70 L. Ed. 986 6

United States vs. Nord Deutscher Lloyd, 223 U. S. 512, 32 S. Ct. 244, 56 L. Ed. 531 9

United States vs. Northern Pacific Railroad Company, 242 U. S. 190, 37 S. Ct. 22, 61 L. Ed. 240 15

United States vs. Oregon, etc., Ry. Co., 164 U. S. 526, 17 S. Ct. 165, 41 L. Ed. 541 6

United States vs. Palmer, 3 Wheat. 610, 631, 4. L. Ed. 471, 477 6

United States vs. Wiltberger, 5 Wheat. 76, 92, 5 L. Ed. 37, 42 16

No. 224

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

OSAKA SHOSEN KAISHA LINE,
Claimant of the Steamship "SANTOS MARU",
Petitioner,

VS.

UNITED STATES OF AMERICA

BRIEF FOR PETITIONER

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

BRIEF STATEMENT OF THE CASE

The Steamship "Santos Maru," belonging to the Osaka Shosen Kaisha Line, arrived at the port of New Orleans, Louisiana, on June 11th, 1932, having as a third class passenger one Salvatore Sprovieri, an alien en route from Brazil to Japan on a through ticket, with no visa entitling him to enter the United States. At New Orleans the immigration officers served

upon the master an order in writing instructing him to detain all third class passengers aboard the vessel at all ports of the United States. On June 19, 1932, the third class passenger Salvatore Sprovieri escaped from the vessel, through the negligence of the officers and crew of said steamship the District Court found upon demurrer. The immigration authorities were notified of the escape by the agents of the vessel; the alien was subsequently arrested and deported upon another vessel of the petitioner. (R., 7-8, 13.)

The Secretary of Labor, considering it impracticable to proceed by criminal action, instituted this libel *in rem* under Sec. 146, Title 8, Mason's U. S. C., (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27) for failure to prevent the landing of the alien at a time and place other than that designated by the immigration authorities. (R., 2-4.)

Upon demurrer, the District Court found the facts as outlined above and dismissed the libel. (R., 6-9.)

The United States appealed to the Circuit Court of Appeals for the Fifth Circuit. This Court distinguished the case of Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, held the rule promulgated by the Commissioner General under which the order was served upon the master of the SS Santos Maru reasonable, and declined to follow the decision of the Circuit Court of Appeals for the Second Circuit in The Havana 63 F. (2d) 812 (CCA 2, 1933), (R., 14-18). Writ of certiorari was thereupon sought.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (Section 347 (a), Title 28, Mason's U. S. C.).

ASSIGNED ERRORS TO BE URGED:

1. The holding that the immigration authorities have the power under Section 146, Title 8, Mason's U. S. C., to issue orders requiring the detention of aliens aboard a vessel without landing, and not merely the power to promulgate regulations designating times and places for the landing of aliens.

2. The holding that Rule 3 (6) (H), Immigration Rules, January 1, 1930, providing for the procedure to be followed with respect to denying landing privileges to through passengers and notification of masters of the liability to the penal provisions of Section 146, Title 8, Mason's U. S. C., for failure to observe orders so made, is a valid exercise of the power granted the Commissioner General of Immigration under Section 102, Title 8, Mason's U. S. C., to adopt rules and regulations for carrying out the provisions of the immigration laws and is a rule made in accordance with Section 146, Title 8, Mason's U. S. C.

3. The holding that Section 146, Title 8, Mason's U. S. C., applies to the case of "through passengers", i.e., passengers being transported between foreign ports via an American port of call.

4. The holding that the penal provisions of Section 146, Title 8, Mason's U. S. C., are applicable to infractions of Rule 3 (6) (H), Immigration Rules, January 1, 1930.

SUMMARY OF ARGUMENT

1. Section 146, Title 8, Mason's U. S. C., provides for the orderly landing of aliens for examination by compelling transportation agencies to present them only at designated times and places; this section confers no authority upon the immigration authorities to prohibit entirely the entrance or landing of aliens nor to require their detention aboard vessels.

2. Transporting a passenger to a foreign country on a through ticket via an American port of call is not "bringing an alien to the United States" within the meaning of Section 146, Title 8, Mason's U. S. C. (Section 10, Act of February 5, 1917, as amended by Act of May 26, 1924, Section 27).

3. Rule 3 (6) (H), Immigration Rules, January 1, 1930, is not authorized by Section 146. Failure to comply with an order of detention made under said Rule 3 (6) (H) therefore does not subject the persons named in Section 146 to the penal provisions thereof.

1. Section 146, Title 8, Mason's U. S. C., provides for the orderly landing of aliens for examination by compelling transportation agencies to present them only at designated times and places; this section confers no authority upon the immigration authorities to prohibit entirely the entrance or landing of aliens nor to require their detention aboard vessels.

Section 146, Title 8, Mason's U. S. C. (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27)* in substance provides as follows:

> "(a) It shall be the duty of every person . . . bringing an alien to . . . the United States, to prevent the landing of such alien in the United States *at any time or place* other than as designated by the immigration officers. . .

"(b) Proof that the alien failed to present himself *at the time and place designated by the immigration officers* shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers."

*Section 146, Title 8, Mason's U. S. C.: *Prevention of unauthorized landing of aliens; prima facie proof of landing.* (a) It shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in Section 102 of this title, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers. (Feb. 5, 1917, c. 29, Sec. 10, 39 Stat. 881; May 26, 1924, c. 190, Sec. 27, 43 Stat. 167).

To arrive at the intention of the legislative body is the cardinal tenet of statutory construction. Smythe vs. Fiske, 23 Wall. 374, 380, 23 L. Ed. 47, 49; United States vs. Oregon, etc. R. Co., 164 U. S. 526, 17 S. Ct. 165, 41 L. Ed. 541; United States vs. Palmer, 3 Wheat. 610, 631, 4 L. Ed. 471, 477; Hawaii vs. Mankichi, 190 U. S. 197, 212, 23 S. Ct. 787, 47 L. Ed. 1016, 12 Am. Crim. Rep. 465. As was said in United States vs. Katz, 271 U. S. 354, 46 S. Ct. 513, 70 L. Ed. 986:

> "All laws are to be given a sensible construction, and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

And the enactment as a whole can be considered to determine the true intent of the legislative body. United States vs. Katz, supra.

In considering Section 146, it is first apparent that no mention is made in either of its paragraphs of the detention of an alien aboard a vessel or the issuance of orders compelling a master or agent so to detain an alien aboard a vessel. While the phrasing is in negative form, petitioner submits that there can be no doubt that paragraph (a) of the section merely grants to the immigration authorities the power to designate ports of entry and enact regulations respecting times when transportation agencies may present passengers for examination to determine their qualifications as immigrants. It is submitted that the emphasis of the section is upon the words italicized above.

The clearest proof of the intention of the legislature in this respect is to be found in paragraph (b), it is submitted. That section clearly contemplates the designation of a time and place for landing by the immigration officers and certainly does not contemplate the absolute prohibition of landing by those officers. Further, within paragraph (a) of Section 146 reference is made to Section 102. The provision of Section 102 referred to deals with the presentation of aliens for examanination, showing that Congress likewise had in mind in Section 146 the presentation of aliens for examination. (The pertinent portion of Section 102 is: ". . . (The Commissioner General) shall prescribe rules for the entry and inspection of aliens coming into the United States from or through Canada and Mexico so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose. . ")

That Section 146 contemplates an examination of persons brought to the United States as immigrants is made abundantly clear by Section 180 (a), Title 8, Mason's U. S. C.* This Section 180 (a) shows quite clearly that the Congress deemed it of great importance that prospective immigrants should present themselves for admission at designated times and places, and the remarkable similarity of language shows quite clearly what was intended by the enactment of Section 146.

*Sec. 180a. *Entry of alien at improper time or place; eluding examination or inspection; misrepresentation and concealment of facts; penalty.* Any alien

who after March 4, 1929, enters the United States at any time or place other than as designated by immigration officials or eludes examination or inspection by immigration officials, or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment. (Mar. 4, 1929, c. 690, Sec. 2, 45 Stat. 1551.)

Other portions of the immigration act lend strong support to the contention that had Congress intended that the immigration authorities should be empowered by Section 146 to issue general orders of detention that this power would have been set forth in that section in unmistakable language. Section 147 provides as follows, in part:

> *"Detention of aliens for observation and examination; inspectors to report condition of vessel.* For the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded . . . the Commissioner General of Immigration . . . may direct that such aliens shall be detained on board the vessel bringing them, or in a United States Immigration Station at the expense of such vessel . . . a sufficient time to enable the immigration officers . . . to subject aliens to observation and examination . . ."

And Section 167 provides for the detention of alien seamen on board a vessel and provides penalties for failure to detain or to deport such seamen, the language of that section being quite similar to the language used in Section 146 and illustrating quite clearly how

easily Section 146 could have been phrased had it been the intention of the Congress to permit detention orders to be issued under Section 146.

Section 154 likewise provides penalties for the failure to detain aliens unlawfully brought to this country on board a vessel after the master of the vessel was ordered to detain the alien aboard the vessel. In fact, had it not been for the decision of this Honorable Court in United States vs. Nord Deutscher Lloyd, 223 U. S. 512, 32 S. Ct. 244, 56 L. Ed. 531, that this section applied only to cases of vessel owners unlawfully bringing aliens to the United States, under the circumstances of the instant case it probably would be contended that the petitioner was liable under Section 154 for failure to detain the through passenger.

That the Commissioner General of Immigration is himself aware of the meaning of Section 146, under which the vessel was libeled in the instant case, is shown by the order made in the case of United States vs. SS Coamo, 267 U. S. 220, 45 S. Ct. 237, 69 L. Ed. 582. In that case the master was ordered to present the two aliens concerned at Ellis Island. On his failure to do so, this Honorable Court held the vessel liable for a penalty of $1,000 for each alien.

Your petitioner therefore respectfully submits that the intention of the Congress in enacting Section 146 was clearly to provide for the orderly presentation and examination of aliens, did not empower the issuance of detention orders; and it is submitted that the proper construction of Section 146 by the Commissioner

General has received the tacit approval of this Honorable Court in the case of United States vs. SS Coamo, *supra*.

2. Transporting a passenger to a foreign country on a through ticket via an American port of call is not "bringing an alien to the United States" within the meaning of Section 146, Title 8, Mason's U. S. C. (Section 10, Act of February 5, 1917, as amended by Act of May 26, 1924, Section 27).

The words of Section 146, Title 8, Mason's U. S. C., "bringing an alien to the United States" are first construed by this Honorable Court in Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, in which a unanimous court speaking through Mr. Justice Holmes said:

> "The reasoning is not long. The phrase which qualifies the whole section is 'bringing an alien to the United States'. It is only 'such' officers of 'such' vessels that are punished. 'Bringing to the United States', taken literally and nicely, means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back and merely as incident to employment on the instrument of transport."

This interpretation was followed in construing similar language of Section 145, of Title 8, Mason's U. S. C., by the Circuit Court of Appeals for the Second Circuit in The President Adams (Dollar Steamship Line vs. Elting), 51 F. (2d) 1035, 1931 AMC 1509 (1931), though it may well be noted here that the meaning of the words in that Section is made clearer by the heading, where the section is summarized by denominating it "bringing *in* aliens subject to disability."

More recently, on facts identical with those of the instant case, the Circuit Court of Appeals for the Second Circuit has reaffirmed its view in affirming the holding of the District Court in The Alphonso XIII, etc., 53 F. (2d) 124, on appeal styled The Havana, etc., 63 F. (2d) 812 (1933). In that case certain foreigners were being transported from Mexican ports to Spain by ports of call in the United States, and after issuance of orders to the masters to detain the aliens on board, the aliens escaped into the United States. The Circuit Court of Appeals held that the cases were ruled by the decision in The President Adams, *supra,* and that the repeated adoption by Congress of the section in question without material change following the interpretation given it in Taylor vs. United States, *supra,* brought the construction of the statute within the rule of those decisions which hold that where a statute has been so re-enacted it incorporates existing judicial interpretations, citing United States vs. Cerecedo Hermanos y Compania, 209 U. S. 337, 28 Sup. Ct. 532, 52 L. Ed. 821; Bruce vs. Tobin, 245 U. S. 18, 38 Sup. Ct. 7, 62. L. Ed. 123; Louisville Cement Company vs. Interstate Commerce Commission, 246 U. S. 638, 644, 38 Sup. Ct. 408, 62 L. Ed. 914; Heald vs. District of Columbia, 254 U. S. 20, 23, 41 Sup. Ct. 42, 65 L. Ed. 106.

In The Havana, *supra,* the contention made in the instant case and made the basis of the opinion of the court below was also made, that is, that the amendment of the Act of 1903 by the Acts of 1917 and 1924 avoided the effect of the decision in Taylor vs. United States, *supra,* and made clear Congress' intention to apply Section 146 to cases where an alien comes to

the United States aboard a vessel even though he is traveling on a through ticket and the steamship company brings him to the United States only as incident to transporting him to a foreign country. Both the District Court and the Circuit Court rejected this contention, it being pointed out by the District Court that the amendment made was necessary to provide for the extension of the section to embrace toll roads and bridges as well as steamship companies. The District Court also pointed out that the notices served by the immigration officers were not in accordance with Section 146 because they were detention orders, not orders designating a time or place for landing of aliens as provided by the section.

The context of the Act in which Section 146 occurs adds weight to the view that the words "bringing an alien to, or providing a means for an alien to come to, the United States", mean the bringing of persons to the United States as immigrants and not as passengers intended to be carried away from the United States on the same vessel. Section 142 relates to "Advertisement of employment to aliens, etc.", Section 143 to "Solicitation of immigration by transportation companies", Section 144 to "Bringing in or harboring or concealing certain aliens", Section 145 to "Bringing in aliens subject to disability, or afflicted with disease, and Section 147 to "Detention of aliens for observation and examination; inspectors to report condition of vessel". All of these sections of the Act which surround the section in question undoubtedly deal with immigrants and not mere passengers who are aliens. Section 147, which immediately follows the section in question, refers to the detention of alien immigrants

to see whether they belong to excluded classes, and it irresistibly follows that Section 146 relates also to the landing of persons who are being brought to the United States for the purpose of immigration.

Your petitioner respectfully submits to this Honorable Court that the careful consideration given the statute by the District Court in The Alphonso XIII, *supra,* and by the Circuit Court of Appeals for the Second Circuit in The Havana, *supra,* has led to a correct interpretation of the statute by those courts, and that the opinions of this Honorable Court in Taylor vs. United States, *supra,* and United States vs. Coamo, *supra,* conclude the matter.

3. Rule 3 (6) (H), Immigration Rules, January 1, 1930, is not authorized by Section 146. Failure to comply with an order of detention made under said Rule 3 (6) (H) therefore does not subject the persons named in Section 146 to the penal provisions thereof.

In the instant case the order made by the immigration officer was one of detention, prohibiting the landing of the alien at any port of the United States, and was manifestly made under Rule 3 (6) (H), Immigration Rules, January 1, 1930.* As is pointed out by petitioner above, Section 146 does not provide for the issuance of orders of detention and prohibition and does not deal with "through passengers", and it necessarily follows that Rule 3 (6) (H) is not authorized by Section 146, it therefore did not have the force of law, and a failure to comply strictly with the terms of orders issued thereunder is not punishable by libel brought under Section 146.

*Rule 3 (6) (H): Aliens who are through passengers on vessels touching at ports of the United States

may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is denied the alien and call the master's attention to the requirements and fine provisions of Section 27 of the Immigration Act of 1924. Aliens landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

By Section 102, Title 8, Mason's U. S. C., the Commissioner General of Immigration is specifically empowered to establish rules and regulations only where such rules are not "inconsistent with law", were it necessary even to refer to the provisions of the statute when it is so clearly established law that an administrative official or an executive department cannot make regulations which are not within the terms of the statute interpreted. Iselin vs. United States, 270 U. S. 245, 46 S. Ct. 246, 70 L. Ed. 566; Merritt vs. Cameron, 137 U. S. 542, 11 S. Ct. 174, 34 L. Ed. 772; Campbell vs. Galeno Chemical Co., 281 U. S. 599, 50 S. Ct. 412, 74 L. Ed. 1063; International R. Co. vs. Davidson, 257 U. S. 506, 514, 42 S. Ct. 179, 66 L. Ed. 341, 343; United States vs. 200 Barrels of Whiskey, 95 U. S. 571, 24 L. Ed. 491. Further, it is a well recognized rule of law that doubtful terms which have acquired through judicial interpretation a well understood legislative meaning are presumed to be used by the legis-

lature in the sense determined by authoritative decisions. The Abbotsford, 98 U. S. 440, 25 L. Ed. 168; Hackfeld & Company vs. United States, 197 U. S. 442, 25 S. Ct. 456, 49 L. Ed. 826. Since the language interpreted in Taylor vs. United States, *supra,* has not been altered, the changes in Section 146 being additions and not corrective amendments, it follows that both by the clear terms of the statute and by the established rules of statutory construction that the Commissioner General could not make regulations respecting "through passengers" under the grant of power contained in Section 146.

A reference to its provisions reveals that the Immigration Act is highly penal in character. Huntington vs. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 L. Ed. 1123; United States vs. Harris, 177 U. S. at page 309, 20 S. Ct. 609, 611, 44 L. Ed. 780; Wallis vs. Tecchio, 65 F. (2d) 250 (CCA 5, 1933). Even due care to observe the provisions of the statute is insufficient to relieve a carrier from liability. The Nanking, 290 F. 769 (CCA 9, 1923); Lloyd Royal Belge Societe Anonyme vs. Elting, (D. C. N. Y. 1931) 51 F. (2d) 790. There is no general clause providing a penalty for violations of the various parts of the statute, but each part carries its own penalty. Sections 138, 139, 144, 145, 146, 150, 154, 156, 163, 167, 171, Title 8, Mason's U. S. C.; United States vs. SS Coamo, *supra;* The Presidente Wilson, 56 F. (2d) 742 (CCA 2, 1932). As a penal statute, the statute should be construed to apply only to cases coming plainly within its terms. United States vs. Northern Pacific Railroad Company, 242 U. S. 190, 37 S. Ct. 22, 61 L. E. 240.

An interpretation of the statute to uphold orders of detention under Section 146, as in this case, would make a vessel liable for double penalties whenever an alien escapes after a detention order is made, for the vessel would be liable under Section 146 for failure to present the alien at a proper time and place and would also be liable under the Section providing for the issuance of the detention order. Such a construction is opposed to the entire tenor of the Immigration Act, with its specific penalties for each particular offense. Further, if detention orders could be issued under Section 146, these orders would be unlimited in nature since that Section is absolute in terms. This leads to the preposterous conclusion that the other Sections of the Immigration Act are merely directory —regulations could be made by the authorities as they saw fit since they could prohibit any persons they pleased from landing under Section 146.

In short, your petitioner herein respectfully submits that the case comes clearly within the rules laid down by Chief Justice Marshal in the case of United States vs. Wiltberger, 5 Wheat. 76, 92, 5 L. Ed. 37, 42, quoted in Hackfeld & Company vs. United States, *supra,* as follows:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law of the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judical department. It is the legislature, not the court, which is to define a crime and ordain its punishment."

Wherefore, petitioner prays that the judgment of the Circuit Court of Appeals herein be reversed and that the judgment of the District Court be affirmed and for such other relief as may be proper.

Respectfully submitted,

J. NEWTON RAYZOR,
ROBERT EIKEL, JR.
Attorneys for Osaka Shosen Kaisha Line.

PROOF OF SERVICE

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared J. Newton Rayzor, well known to me, who, after being duly sworn, upon his oath deposed and said:

I am an attorney for Osaka Shosen Kaisha Line, petitioner in the above cause, and acting as such did duly serve upon the Solicitor General of the United States two copies of the brief for petitioner in the above cause. Service was made by mailing to the Solicitor General at Washington, D. C., said copies, by registered mail, return receipt requested.

J. NEWTON RAYZOR.

SWORN TO and subscribed before me, this 7th day of November, A. D. 1936.

Notary Public in and for Harris County, Texas

Notary Public in and for
Harris County, Texas

INDEX

	Page
Opinions below	1
Jurisdiction	1
Statute involved	2
Questions presented	4
Statement	4
Discussion	7

CITATIONS

Cases:	
The Habana, 63 F. (2) 812	6
Taylor v. *United States*, 207 U. S. 120	6
Statutes:	
Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874, 881, 885, as amened by the Act of May 26, 1924, c. 190, 43 Stat. 153:	
Sec. 10 (U. S. C., Title 8, Sec. 146)	2
Sec. 15 (U. S. C., Title 8, Sec. 151)	7
Sec. 23 (U. S. C., Title 8, Sec. 102)	3
Immigration Act of 1924, 43 Stat. 166:	
Sec. 24 (U. S. C., Title 8, Sec. 222)	3
Miscellaneous:	
Rule 3 (6) (H) of Immigration Rules of January 1, 1930	3

90595—36

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the issuance of a writ of certiorari in the instant case.

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court appear at R. 16–17. The opinion of the Circuit Court of Appeals (R. 32–36) is reported in 84 F. (2d) 482.

JURISDICTION

The judgment sought to be reviewed was entered June 10, 1936 (R. 36). The petition for a writ of certiorari was filed July 24, 1936. While the peti-

tion for writ of certiorari does not so state, the jurisdiction of this Court is presumably invoked under Section 240 (a) of the Judicial Code.

STATUTE INVOLVED

Immigration Act of February 5, 1917, c. 29, Section 10, 39 Stat. 874, 881, as amended by the Immigration Act of May 26, 1924, c. 190, Section 27, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146):

> SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be

a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

Section 24 of the Immigration Act of 1924, 43 Stat. 166 (U. S. C., Title 8, Sec. 222):

> The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; * * *

See also Section 23 of the Immigration Act of 1917, 39 Stat. 892 (U. S. C., Title 8, Sec. 102).

Rule 3 (H) (6) of the Immigration Rules of January 1, 1930:

> Aliens who are through passengers on vessels touching at ports of the United States may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is

denied the alien and call the master's attention to the requirements and fine provisions of Section 27 of the Immigration Act of 1924. Aliens landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

QUESTIONS PRESENTED

1. Whether Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924, authorizes the immigration authorities to issue detention orders prohibiting entirely the entrance or landing of aliens, or whether it makes provision merely for securing the proper landing of aliens by compelling transportation agencies to present them only at designated times and places.

2. Whether a steamship is liable to the penalty provided by Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924, for negligence of her officers and crew in allowing an alien to escape and land in the United States without permission of the immigration authorities and in violation of law, such alien having embarked at a foreign port for through passage, via American ports, to another foreign port.

STATEMENT

The facts are not in dispute (R. 29). As found by the District Court, they may be summarized as follows (R. 16–17):

The Santos Maru, belonging to the petitioner, arrived at New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board. This alien passenger was not bound for the United States and was not entitled to enter the United States, but was en route from Brazil to Japan. Upon the arrival of the steamship at New Orleans immigration officers there issued a written order to the steamship to hold the alien on board at all ports of the United States at which such steamship might touch. This order was duly served upon the officers of the steamship. On June 19, 1932, the steamship arrived at Galveston, and the alien passenger was, by the negligence of the steamship and its officers and crew, allowed to escape and land in the United States without the permission of the immigration authorities and in violation of law. Such steamship officers notified the immigration authorities of the escape of the alien passenger, but such steamship sailed before his arrest. Later such alien passenger was arrested in Galveston and deported on another vessel of the petitioner, and thereafter notice was given the steamship line of the intention of the Government to proceed against it and the Santos Maru for violation of Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924. The Secretary of Labor, being of the opinion that it was impractical and inconvenient to prosecute the matter criminally, a libel in rem was filed against the vessel in the United States District Court for the Southern Dis-

trict of Texas to recover the penalty of $1,000 prescribed by Section 10 of the Immigration Act of 1917, as amended (R. 4–8).

Upon the basis of its findings of fact the District Court concluded, as a matter of law, that the United States was not entitled to recover (R. 17) and entered a decree dismissing the libel (R. 18). The court based its decision upon the ground that Section 10 of the Immigration Act of 1917, as amended by the Act of 1924, did not apply to an alien "through passenger", citing, among others, the decision of this Court in *Taylor* v. *United States,* 207 U. S. 120, and the decision of the Circuit Court of Appeals for the Second Circuit in *The Habana,* 63 F. (2d) 812.

Upon an appeal by the United States (R. 20–26), the Circuit Court of Appeals for the Fifth Circuit reversed the decree of the District Court and remanded the case with instructions to enter a decree in favor of the United States (R. 32–36). That court held that the *Taylor* case, which was a criminal case involving a deserting alien seaman, did not apply because of certain language appearing in the present statute which was not contained in the earlier statute there construed (R. 34–35). The court conceded, however, that its ruling was directly contrary to the decision of the Circuit Court of Appeals for the Second Circuit in *The Habana.* The other decisions relied upon by the District Court were held not to be in point (R. 36).

DISCUSSION

1. The contention of the petitioner that Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924 (*supra,* pp. 2–3), does not authorize the issuance of a detention order to prohibit entirely the entrance or landing of a through passenger and merely makes provision for securing the proper landing of aliens by compelling transportation agencies to present them only at designated times and places seems to be clearly without merit.

The section provides that it shall be the duty of the owner, master, officers, and agents of the vessel "to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers." Without exhausting the possibilities of argument, it seems to us that the plain meaning of the language is that unless and until a time and place are designated by the immigration officers, the duty is on the representatives of the vessel to prevent the landing of an alien passenger. The language cannot mean that in the case of every alien brought to the United States on a vessel the immigration authorities must designate a time and place for him to land, for that would be giving the provision a controlling effect over other provisions of the immigration laws commanding the exclusion of certain classes of aliens and over Section 15 of the Immigration Act of 1917 (39 Stat. 885, U. S. C., Title 8, Sec. 151), under which the immigration officers are

given the discretion either to require arriving aliens to be removed from the vessel to land stations for inspection or to inspect them upon the ship. If the section in question applies to alien "through passengers", the regulation of the Secretary of Labor, pursuant to which the detention order in this case was issued, is, we submit, not inconsistent with the statute.

This point was not specifically discussed in the opinion below in the form in which it is here presented by the petitioner.

2. With respect, however, to the question whether the section involved applies to alien "through passengers", it must be conceded, as was stated by the Circuit Court of Appeals (R. 36), that the decision below is in direct conflict with that of the Circuit Court of Appeals for the Second Circuit in *The Habana,* 63 F. (2d) 812, *supra.* For this reason, and because of the importance of the question in the proper administration of the immigration laws, we do not oppose the issuance of a writ of certiorari.

STANLEY REED,
Solicitor General.
BRIEN McMAHON,
Assistant Attorney General.
WILLIAM W. BARRON,
W. MARVIN SMITH,
Attorneys.

SEPTEMBER 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	6
Argument	
I. Section 10 of the Immigration Act of 1917, as amended, imposes upon officers of vessels a duty to prevent the landing in the United States of an alien passenger who embarked at a foreign port for through passage via American ports to another foreign port	8
A. The literal meaning of the phrase "bringing an alien * * * to the United States" imposes a duty in the case at bar	9
B. If the literal meaning of the section were doubtful, it should be construed to impose a duty in a case of this sort, in order to avoid a grave risk of entries by undesirable aliens, and in order to prevent a breach in an otherwise complete system of immigration regulation	19
II. Section 10 of the Immigration Act of 1917, as amended, *ipso facto* imposes a duty to detain, and no notice from the immigration authorities is required as a condition precedent to the existence of the obligation	29
III. If a notice to detain is a condition precedent to the existence of a duty to detain, the notice in this case was in proper form and properly served	33
Conclusion	37

CITATIONS

Cases:

Church of the Holy Trinity v. *United States*, 143 U. S. 457	17
Clark v. *Williard*, 294 U. S. 211	36
Compagnie Generale Transatlantique v. *Elting*, 298 U. S. 217	26, 29, 33, 35, 36
Cunard S. S. Co. v. *Mellon*, 262 U. S. 100	18
Dollar S. S. Line v. *Elting*, 51 F. (2d) 1035	9, 18, 25
Habana, The, 63 F. (2d) 812	9, 11, 18

Cases—Continued. Page

Lloyd Sabaudo Societa v. *Elting*, 45 F. (2d) 405 s. c. 55 F. (2d) 1048 ... 27
Lloyd Sabaudo Societa v. *Elting*, 287 U. S. 329 ... 26
Manuel Arnus, The, 75 F. (2d) 943, cert. den. 295 U. S. 756 ... 26
Morehead v. *People ex rel. Tipaldo*, Oct. Term, 1935, No. 838, June 1, 1936 ... 36
Nanking, The, 290 Fed. 769 ... 28
Taylor v. *United States*, 207 U. S. 120 ... 6, 9, 13, 14–16, 17, 27
United States v. *Steamship Coamo*, 267 U. S. 220 ... 26, 35
Wilson, The, v. *United States*, Fed. Case No. 17,846, 30 Fed. Cas. 239 ... 17

Statutes:

Act of May 22, 1918, c. 81, 40 Stat. 559 ... 21
Act of March 2, 1921, c. 113, 41 Stat. 1205 ... 21
Act of March 4, 1929, c. 690, 45 Stat. 1551, sec. 2 ... 20, 31
Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217, sec. 18 ... 13, 30
Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874:
Sec. 1 ... 20
Sec. 3 ... 13
Sec. 4 ... 13
Sec. 6 ... 12
Sec. 7 ... 12
Sec. 8 ... 12
Sec. 9 ... 12, 25
Sec. 10 ... 2, 4, 6, 8, 30
Sec. 10 (b) ... 30
Sec. 11 ... 12, 22
Sec. 14 ... 13
Sec. 15 ... 32, 35
Sec. 16 ... 13
Sec. 18 ... 22
Sec. 19 ... 13
Sec. 23 ... 31
Sec. 32 ... 26
Immigration Act of May 26, 1924, c. 190, 43 Stat. 153:
Sec. 3 (2) ... 20
Sec. 14 ... 20
Sec. 20 ... 26
Sec. 20 (a) ... 29
Sec. 24 ... 35
Sec. 26 ... 12, 25
Sec. 27 ... 2, 4, 6, 8, 31
Sec. 28 (b) ... 20

Miscellaneous:

	Page
Century Dictionary and Cyclopedia, Vol. 1, p. 685	11
Executive Order No. 6166, June 10, 1933	31
Executive Order No. 5426, Aug. 20, 1930	21, 35
Immigration Laws and Rules of Jan. 1, 1930, Rule 3, Subdivision H, par. 6	21, 35
Murray, *New English Dictionary*, Vol. 1, p. 1107	11
Report of the Senate Committee on Immigration, Senate Report No. 355 (Calendar No. 297) 63d Cong., 2d Sess., March 19, 1914	10
Standard Dictionary (1894) Vol. 1, p. 239	11
Webster, *New International Dictionary* (2d ed., unabridged, 1936), p. 337	11

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court appear at R. 7–8, and are reported in 1935 American Maritime Cases, 1176. The opinion of the Circuit Court of Appeals, R. 14–18, is reported in 84 F. (2d) 482.

JURISDICTION

The judgment sought to be reviewed was entered June 10, 1936. (R. 18.) A petition for a writ of certiorari was filed July 24, 1936, and granted Oc-

tober 12, 1936. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 10 of the Immigration Act of 1917, as amended by Section 27 of the Immigration Act of 1924, imposes a penalty on an officer of a vessel who, having been notified by the immigration authorities to detain on board an alien who had embarked at a foreign port for through passage via American ports to another foreign port, failed to prevent the landing in the United States of that alien.

STATUTE INVOLVED

Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146), provides:

> SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the Immigration officers. Any such person, owner, master,

officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

STATEMENT

The evidence is not reported, but the District Court made findings of fact under Admiralty Rule 46½ (R. 7–8) which the parties have stipulated "shall be taken as true" (R. 13), and which may be summarized as follows:

The Steamship "Santos Maru", belonging to the petitioner, Osaka Shosen Kaisha Line, arrived at the port of New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board.

Sprovieri was not bound for the United States and not entitled to enter the United States, but was en route from Brazil to Japan. "Upon the arrival of such Steamship at New Orleans, the Immigration Officers there issued an Order in writing to the Steamship to hold the alien on board at all ports of the United States at which such Steamship might touch. This Order was duly served upon the Officers of the Steamship." (R. 7, fdg. b.)

On June 19, 1932, the Steamship arrived at the port of Galveston, Texas, "and the said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law." (R. 7–8, fdg. c). "Such Steamship Officers notified the United States Immigration Authorities of the escape of the said alien passenger, but such Steamship sailed before his arrest." (R. 8, fdg. d.) Later the alien was arrested in Galveston and deported on another vessel of the petitioner. "Thereafter notice was given such Steamship Line of the intention of the Government to proceed against it and the 'Santos Maru' for violation of" Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146). (R. 8, fdg. e.)

"It being in the opinion of the Secretary of Labor impractical and inconvenient to prosecute the

matter criminally" (R. 8, fdg. f), the Government filed a libel *in rem* against the vessel "Santos Maru" in the United States District Court for the Southern District of Texas. This libel, after setting forth the facts in much the same manner as we have just done, stated (R. 3–4, pars. IV, V):

> IV
>
> That by reason of all the foregoing allegations, the owners, masters, officers and agents of the S. S. "SANTOS MARU" are liable to the United States for a penalty of One Thousand Dollars ($1,000.00); that said penalty is now owing and unpaid.
>
> V
>
> That by reason of all the foregoing allegations, such penalty of One Thousand Dollars, now due and owing to the United States, is a lien upon the S. S. "SANTOS MARU," whose owners, masters, officers and agents had violated the provisions of Section 146, Title 8, United States Code annotated in the manner and form aforesaid.

To enforce this lien, the libel prayed that the United States have a decree for its debt and penalty of $1,000 and that the vessel be forfeited to the United States or sold to satisfy its lien. (R. 4, par. VI.)

The District Court held that the Government was not entitled to recover (R. 8) and therefore entered a decree dismissing the libel (R. 9). That

court based its decision upon the ground that Section 10 of the Immigration Act of 1917, as amended by Section 27 of the Act of 1924, did not apply to an alien "through passenger." Upon an appeal by the Government (R. 10), the Circuit Court of Appeals for the Fifth Circuit reversed the decree of the District Court and remanded the case with instructions to enter a decree in favor of the United States (R. 18). A petition for certiorari was filed in this Court July 24, 1936 (R. 21) and granted October 12, 1936 (R. 21).

SUMMARY OF ARGUMENT

Section 10 of the Immigration Act of 1917, as amended, imposes upon vessels, their owners, and their officers "bringing an alien to * * * the United States" a duty "to prevent the landing of such alien."

The first question is whether the phrase "bringing an alien" is sufficiently broad to cover the case of a vessel that carries to a port of the United States an alien "through passenger", that is, one who had embarked at a foreign port for through passage via American ports to another foreign port. We contend for an affirmative answer. This answer is justified by the ordinary meaning of the verb "bring", and by the use of the verb in other parts of the immigration statutes. The result reached by this Court in *Taylor* v. *United States,* 207 U. S. 120, is not opposed. Indeed, a negative answer to this first question will create

a breach in an otherwise complete system of immigration regulation under which carriers are penalized if they fail to cooperate in preventing entry into the United States by undesirable aliens. If our construction is rejected and the petitioner's construction is accepted, a carrier that brings to this country an alien through passenger who is diseased or is a criminal or an anarchist will go unpunished even though the alien is landed without inspection and allowed to roam the streets of our sea-coast cities.

The second question is whether, before they are given by the immigration inspectors any notice to detain, a vessel and its officers are under a duty to detain alien passengers. We contend that the duty is automatic and arises before notice. This contention is supported by the words of the statute, and by its underlying policy of preventing a race for diligence between aliens and immigration authorities.

The third question is whether, if a notice to detain is required, the notice in this case was in proper form. The petitioner argues that the notice was invalid because it did not indicate a time and place where the alien might be landed, but instead required detention on board the vessel. To this argument we answer that neither the words nor the policy of the immigration law furnish any basis for the contention that every alien, no matter how undesirable, is entitled to be landed and to have his day in the United States.

ARGUMENT

I

SECTION 10 OF THE IMMIGRATION ACT OF 1917, AS AMENDED, IMPOSES UPON OFFICERS OF VESSELS A DUTY TO PREVENT THE LANDING IN THE UNITED STATES OF AN ALIEN PASSENGER WHO EMBARKED AT A FOREIGN PORT FOR THROUGH PASSAGE VIA AMERICAN PORTS TO ANOTHER FOREIGN PORT

The first sentence of Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146) provides:

> That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, *bringing an alien to,* or providing a means for an alien to come to, *the United States,* to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. [Italics added.]

In the case at bar this section has been applied by the lower court to a ship's officer who negligently failed to prevent the landing in the United States of an alien passenger who had embarked at Brazil for through passage via New Orleans, Louisiana, and Galveston, Texas, to Japan. The petitioner contends that the lower court erred in holding that this section imposes any duty to prevent the land-

ing in the United States of such a so-called "through passenger." (Br. pp. 10–13.) It is its position that in transporting such a passenger the vessel was not, in the words of the statute, "bringing an alien to * * * the United States." In this connection he relies chiefly upon *Taylor* v. *United States,* 207 U. S. 120, and two decisions of the Circuit Court of Appeals for the Second Circuit, *The Habana,* 63 F. (2d) 812 (C. C. A. 2d), and *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035 (C. C. A. 2d).

We contend that the construction given to Section 10 by the court below is required by a literal interpretation of the statute. We further contend that any other construction will create a serious breach in an otherwise complete system whereby steamship companies are penalized if they allow any alien to land prior to inspection or if they convey to the United States any alien with a loathsome disease.

*A. The literal meaning of the phrase "bringing an alien * * * to the United States" imposes a duty in the case at bar.*

The petitioner (Br. 4) and ourselves are in accord in believing that the words in Section 10 with which we are particularly concerned are these:

> it shall be the duty of every person, including * * * officers * * * of vessels

> * * * bringing an alien to * * * the United States, to prevent the landing of such alien * * *

In view of the legislative history of this section,[1] we do not feel justified in arguing that the phrase "or providing a means for an alien to come to" (which appears in the statute between the phrase "bringing an alien to" and the phrase "the United States") is *directly*[2] in issue. We believe that the court below in the case at bar gave too much weight to this phrase. (R. 16.) In our opinion, as in the opinion of the Circuit Court of Appeals for the Second Circuit, the whole section must be read

---

[1] The report of the Senate Committee on Immigration, Senate Report No. 355 (Calendar No. 297), 63d Cong., 2d Sess., March 19, 1914, to accompany H. R. 6060, which later, as H. R. 10834, 64th Cong., became the Immigration Act of 1917, explains at page 9 the reason for inserting in Section 10 the phrase "or providing a means for an alien to come to." The report states that: "On page 20, line 10, after the words 'bringing an alien to,' insert 'or providing a means for an alien to come to'; this in order to make the provisions of the section apply to those who conduct toll roads and bridges, as well as to those operating ordinary vehicles of conveyance.

[2] We do, however, contend that the phrase "providing a means for an alien to come to" has an *indirect* bearing. See page 28, *infra*. By adopting this phrase, Congress imposed a penalty even on an international bridge company which does not prevent an alien who has not been passed by the immigration authorities from walking for five minutes into the United States. Thus it shows that Congress intended to penalize transportation companies which did not detain, until otherwise directed, every alien, no matter how short his stay in American territory.

distributively, and, so read, the phrase "providing a means for an alien to come to" applies only to international bridges and toll roads. *The Habana*, 63 F. (2d) 812, 813 (C. C. A. 2d).

Conceding that the phrase of chief importance is "bringing an alien to * * * the United States," we contend that, read literally, it embraces a case like that at bar where a carrier conveys to a port of the United States an alien whom he intends, and has every reason to expect, to take out again when the ship moves on.

It is clear that the dictionary definition[3] of "bring" signifies broadly conveyance to or toward a place. It does not imply a limitation such as that upon arrival the object conveyed will be brought in or will come to rest. And it would be peculiarly inappropriate to read any such limitation into the definition where, as here, the verb "bring" is used

---

[3] In the leading dictionaries the first meaning of the verb "bring" is given as follows:

(1) "implies motion towards the place where the speaker or auditor is." Murray, *New English Dictionary*, Vol. 1, p. 1107.

(2) "to convey, carry or conduct to the place where the speaker is." *Standard Dictionary* (1894) Vol. 1, p. 239.

(3) "to bear, convey or take along in coming." *The Century Dictionary and Cyclopedia*, Vol. 1, p. 685.

(4) "to cause to come with oneself, as by conveying, leading, or carrying, from one place to another, the direction of motion being always toward the place regarded as nearer to the person from whose point of view the action is contemplated." Webster's *New International Dictionary* (2d ed., unabridged, 1936) p. 337.

together with the preposition "to", not "in" or "into."

As helpful as the dictionaries are the immigration statutes themselves in revealing the meaning of the phrase "bringing an alien *to*, * * * the United States." This phrase, which occurs frequently in the Immigration Acts of 1917 and 1924, in most instances, is not used narrowly.[4] When Congress intended to draw a fine line, and to legislate only with respect to such transportation as contemplated the United States as a place of final destination, it used such expressions as "come *into* the United States," "bringing an alien *into* the United States" or "imports." This is plain from the very sections of the law to which the petitioner (Br. 12) points as an aid to construction.[5] And

---

[4] See, for example, Section 9 of the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 880–881, as amended by Section 26 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 166–167, U. S. C., Title 8, Sec. 145; and Section 11 of the Immigration Act of Feb. 5, 1917, 39 Stat. 882, U. S. C., Title 8, Sec. 11.

[5] The petitioner (Br. 12) refers to U. S. Code, Title 8, Sec. 142, which is Section 6 of the Immigration Act of Feb. 5, 1917, 39 Stat. 879. There it is made unlawful to "solicit * * * any alien to come *into* the United States by promise of employment." Petitioner next refers to U. S. Code, Title 8, Sec. 143, which is Section 7 of the 1917 Act, 39 Stat. 879. Again it is made unlawful for a carrier to "encourage * * * any alien to come *into* the United States," and it is provided that a carrier who brings to a port of the United States "any alien *so* solicited" shall be fined. Petitioner also points to U. S. Code, Title 8, Sec. 144, which is Section 8 of the 1917 Act, 39 Stat. 880. This section punishes carriers who "shall bring *into* or land in the United States" any alien not entitled to enter.

from a similar nice use of language elsewhere in the immigration law we may conclude that the phrases "come *into* the United States," "bringing an alien *into* the United States"[6] and "imports"[7] have become the appropriate words of art to indicate a conveyance to a place of final destination.

To assimilate to those words of art the phrase "bringing * * * to * * * the United States," and to justify an abnormally narrow construction of this phrase, the petitioner relies on a remark of Mr. Justice Holmes in *Taylor* v. *United States,* 207 U. S. 120, 124–125, which, if it is not an *obiter dictum,* is an alternative and, in our opinion, insupportable reason for a result with which we entirely agree.

In *Taylor* v. *United States,* there was involved Section 18 of the Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217,[8] the precursor of

[6] See Immigration Act of Feb. 5, 1917, c. 29; 39 Stat. 874: Sec. 3, 8th proviso, 39 Stat. 878; Sec. 8, 39 Stat. 880; Sec 14, 39 Stat. 884; Sec. 16, 39 Stat. 886.

[7] See the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874: Sec. 4, 39 Stat. 878; Sec. 19, 39 Stat. 889.

[8] "SEC. 18. That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers, and any such owner, officer, agent, or person in charge of such vessel who shall land or permit to land any alien at any time or place other than that designated by the immigration officers, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine for each alien so permitted to land of not less than one hundred nor more than one

the section with which we are now concerned. In that case the issue was whether the section applied to a master of a vessel who allowed to land in New York an alien sailor who had shipped at Hungary for the round trip, not to be paid off until he returned. In delivering the opinion of this Court "that the section does not apply to the ordinary case of a sailor deserting while on shore leave" (207 U. S. at 124), Mr. Justice Holmes said (207 U. S. 124–125):

> The reasoning is not long. The phrase which qualifies the whole section is, "bringing an alien to the United States." It is only "such" officers of "such" vessels that are punished. "Bringing to the United States", taken literally and nicely, means, as a similar phrase in § 8 plainly means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport. So again, literally, the later words "to land" mean to go ashore. To avoid certain inconveniences the Government and the courts below say that sailors do not land unless they permanently leave the ship. But the single word is used for all cases and must mean the same

---

thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, and every such alien so landed shall be deemed to be unlawfully in the United States and shall be deported, as provided by law."

thing for all, for sailors and other aliens. It hardly can be supposed that a master would be held justified under this section for allowing a leper to wander through the streets of New York on the ground that, as he expected the passenger to return and his expectations had been fulfilled, he could not be said to have allowed the leper to land. The words must be taken in their literal sense. "Landing from such vessel" takes place and is complete the moment the vessel is left and the shore reached. But it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so. The contrary always has been understood of the earlier acts, in judicial decisions and executive practice. If we reject the ambiguous interpretation of "to land", as we have, the necessary result can be reached only by saying that the section does not apply to sailors carried to an American port with a *bona fide* intent to take them out again when the ship goes on, when not only there was no ground for supposing that they were making the voyage a pretext to get here, desert and get in, but there is no evidence that they were doing so in fact. Whether this result is reached by the interpretation of the words "bringing an alien to the United States", that has been suggested, or on the ground that the statute cannot have intended its precautions to apply to the ordinary and necessary landing of

> seamen, even if the words of the section embrace it, as in *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, does not matter for this case.

The three principal reasons given in the above quotation for not applying the section to sailors are: (1) "bringing to the United States" means transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport; (2) the administrative authorities conceded that the section had no application to seamen who land and later return to the ship, yet, without any verbal justification for the distinction, they were attempting to apply the section to seamen who land and do not later return to the ship; and (3) it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so.

We entirely concur in the second and third of these reasons. The first reason requires closer scrutiny. In the exact form in which it was phrased in *Taylor* v. *United States,* it does not seem to us, and indeed apparently did not seem to Mr. Justice Holmes,[9] an entirely satisfactory ground

---

[9] Note that at page 125, as quoted above, Mr. Justice Holmes said: "Whether this result is reached by the interpretation of the words 'bringing an alien to the United States', that has been suggested, or on the ground that the

upon which to rest the judgment. As phrased in *Taylor* v. *United States,* this first reason really has two subdivisions. First, it is pointed out that "bringing to the United States" means transporting "for the sake of transport"—not transporting "merely as incident to employment on the instrument of transport." (207 U. S. at 125.) Second, it is said that "bringing to the United States" means transporting "with intent to leave in the United States"—not transporting "with intent to carry back." (207 U. S. at 125.) The first subdivision seems to us sound, and is in thorough accord with a decision at circuit by Chief Justice Marshall where he construed an analogous statute. *The Wilson* v. *United States,* Fed. Case No. 17,846, 30 Fed. Cas. 239, 244 (C. C. D. Va.).[10]

---

statute cannot have intended its precautions to apply to the ordinary and necessary landing of seamen, even if the words of the section embrace it, as in *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, does not matter for this case."

[10] I nthat case Marshall, C. J., held that the Act of Feb. 28, 1803, c. 10, 2 Stat. 205, forbidding any master of a vessel to import or bring, into any port of the United States, any negro, where the importation of such person is prohibited by the laws of such State, did not apply to colored seamen employed in navigating such vessel. In so deciding, Marshall, C. J., said (p. 244):

> The agent, or those who are concerned in the agency or importation, are not, in common language, said to be imported or brought in. It is true that a vessel coming into port, is the vehicle which brings in her crew, but we do not in common language say, that the mariners are "imported", or brought in by a particular vessel; we rather say that they bring in the vessel. * * *

The second subdivision, upon which exclusive reliance has been placed by the petitioner in the case at bar, and by the Circuit Court of Appeals for the Second Circuit in *The Habana,* 63 F. (2d) 812, 813 (C. C. A. 2d) and *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035, 1037 (C. C. A. 2d), seems to us unsound. It is contrary to the dictionary meaning of "bring", see page 11, *supra,*[11] and to the reasoning of this Court in *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 122.[12] Furthermore, it is contrary to the following example given by Mr. Justice Holmes himself on the very page of the opinion in the *Taylor* case to which the petitioner points (p. 125):

> It hardly can be supposed that a master would be held justified under this section for allowing a leper to wander through the streets of New York on the ground that, as

---

[11] Note that in *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035 (C. C. A. 2d), Judge A. N. Hand pointed out (p. 1036) that "If taken literally, section 9 might be regarded as justifying the action of the Department" in construing the phrase "bringing * * * to the United States" as including transporting to an American port an alien passenger whose original plan was to proceed with the vessel to Cuba.

[12] The National Prohibition Act, considered in that case, prohibited the "transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States." In holding that this forbade a foreign vessel carrying to a port of the United States intoxicating liquors for beverage purposes as part of a ship's sea stores, this Court pointed out (p. 122): "transportation comprehends any real carrying about or from one place to another."

> he expected the passenger to return and his expectations had been fulfilled, he could not be said to have allowed the leper to land.

This quotation shows that Mr. Justice Holmes thought the statute would impose on the master a duty with respect to a *passenger* conveyed to the port of New York even though the passenger had no intent to stay in the United States but expected to continue with the vessel on its way to some other port. Thus, on the exact facts of this case, *Taylor* v. *United States* is perhaps as much an authority in our favor as against us.

B. *If the literal meaning of the section were doubtful, it should be construed to impose a duty in a case of this sort, in order to avoid a grave risk of entries by undesirable aliens, and in order to prevent a breach in an otherwise complete system of immigration regulation.*

If the literal meaning of Section 10, as amended, were doubtful, there are pressing reasons for adopting the construction we urge. The petitioner's brief (pp. 8–9, 16), undoubtedly in good faith, gives the impression that Section 10 is, if not superfluous, at least cumulative, and that other provisions of the immigration law will ensure the cooperation of carriers in guarding against the risk of entry by an undesirable alien who is making a "through" trip. This is not the case. It is true that the individual "through passenger" who enters without inspection will be deported and punished, if the authorities apprehend him. Section

14 of the Immigration Act of May 26, 1924, 43 Stat. 162, U. S. C., Title 8, Sec. 214; Act of March 4, 1929, c. 690, 45 Stat. 1551, U. S. C., Title 8, Sec. 180a. But such apprehension, as the authors of the immigration law well knew, is a doubtful event and an ineffective method of enforcement. The true safeguard lies in securing the cooperation of the carrier in preventing the entry. And Section 10 is the only part of the immigration statutes which enforces carrier cooperation in the case of a "through" passenger. As we propose to show in detail, unless that section applies, a "through" passenger who had never been examined by any doctor, or consul, or immigration officer, could easily set foot in any one of our sea-coast towns, and could, if he were diseasesd, or a criminal, or an anarchist, do incalculable damage before he was apprehended.

Where an alien, such as Salvatore Sprovieri in the instant case, starts from a foreign port on a vessel that is to carry him via an American port to another foreign port, he need not have any immigration or passport documents, even though he plans to, and does in fact, spend a short time in the United States while his vessel is in port. Though an alien,[13] he is not an immigrant,[14] and so requires

---

[13] Section 1 of the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874; Sec. 28 (b) of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 168.

[14] Section 3 (2) of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 154.

no immigration visa or reentry permit. Moreover, since he is a "through passenger," he requires no passport or passport visa, but may land without documents of any kind, if the immigration officials consent.[15] Thus he comes to our ports without any

---

[15] Visas on alien passports are provided for in the Act of May 22, 1918, c. 81, 40 Stat. 559, as extended by the Act of March 2, 1921, c. 113, 41 Stat. 1205, 1217. Pursuant to the authority conferred on him in those statutes, the President has, by successive executive orders, required that aliens coming to this country under certain circumstances must present passports duly visaed by consular officers of the United States. But these executive orders, including the one which was in effect when Sprovieri arrived at American ports (Executive Order No. 5426, August 20, 1930) have always specifically exempted:

> II * * * (2) Aliens who are through passengers on vessels touching at ports of the United States. In this connection the term "United States" is to be construed as in section 1 of the Immigration Act of 1917. They may land temporarily, under regulations prescribed by the Secretary of Labor * * *.

The only pertinent regulation prescribed by the Secretary of Labor and in force at the time Sprovieri arrived in the United States was Rule 3, Subdivision H, paragraph 6, of the "Immigration Laws and Rules of January 1, 1930," discussed at page 35, *infra*, which provides (p. 125):

> PAR. 6. Aliens who are through passengers on vessels touching at ports of the United States may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is denied the alien and call the master's attention to the requirements and fine provisions of section 27 of the immigration act of 1924. Aliens

preliminary examination of any sort, and any dangerous disease or revolutionary traits that he may have are unknown to our authorities.

To protect us against the danger that such an alien presents, the petitioner seems to suggest (Br. 8–9) that we have the safeguard of Sections 11 and 18 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, 887, U. S. C., Title 8, Secs. 147 and 154. But we submit that neither of these is an adequate protection.

Section 11 [16] (referred to by the petitioner as Section 147) provides that for the purpose of deter-

---

landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

[General Order No. 201, dated March 3, 1933, which is referred to by the Circuit Court of Appeals (R. 17) was not adopted until after the time that Sprovieri arrived in the United States.]

[16] "SEC. 11. That for the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded by this Act, either by reason of being afflicted with any of the diseases or mental or physical defects or disabilities mentioned in section three hereof, or otherwise, or whenever the Secretary of Labor has received information showing that any aliens are coming from a country or have embarked at a place where any of said diseases are prevalent or epidemic, the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them, or in a United States immigration station at the expense of such vessel, as circumstances may require or justify, a sufficient time to enable the immigration officers and medical officers stationed at such ports to sub-

mining whether aliens arriving at ports of the United States are excludable, "the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them." The first point to notice about this section is that it imposes no penalty whatsoever. Hence it is an almost useless provision. A second point is that it requires detention of aliens "on board the vessel *bringing* them, or in a United States immigration station." If a "through passenger" is not "brought" within the meaning of Section 10, then it would seem that he is not "brought" within the meaning of Section 11. (Cf. Petitioner's Brief, pp. 12–13.)

Section 18[17] (referred to by the petitioner as Section 154) has two provisions which might be

---

ject such aliens to an observation and examination sufficient to determine whether or not they belong to the said excluded classes by reason of being afflicted in the manner indicated: *Provided*, That, with a view to avoid undue delay in landing passengers or interference with commerce, the Commissioner General of Immigration may, with the approval of the Secretary of Labor, issue such regulations, not inconsistent with law, as may be deemed necessary to effect the purposes of this section: *Provided further*, That it shall be the duty of immigrant inspectors to report to the Commissioner General of Immigration the condition of all vessels bringing aliens to United States ports."

[17] "SEC. 18. That all aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Secretary of Labor immediate

thought relevant. The first stipulates that it shall be unlawful for a carrier to refuse to receive back on board, and detain when returned, aliens brought to this country in violation of law. This provision does not prevent the damage of an undesirable entry; it merely charges the carrier with the re-

---

deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; * * * and if it shall appear to the satisfaction of the Secretary of Labor that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of $300 for each and every violation of any provision of said sections; * * *. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: * * *"

sponsibility of taking back and detaining a passenger who has already disembarked. Moreover, like Sections 10 and 11, it refers to aliens "brought to this country," and if the phrase has the narrow limitations for which the petitioner contends, then the petitioner, to be consistent, must admit that the provision does not embrace "through passengers."

The other pertinent provision in Section 18 prohibits the landing of an alien who has already been examined and certified as diseased. There are three reasons why this provision is not very helpful: (1) no penalty is attached; (2) the only defect guarded against is disease, so that, for example, an anarchist is not covered; and (3) the provision goes into effect only after examination and certificate, and does not prohibit landing an alien prior to those events.

From this analysis of other parts of the immigration law, we conclude that the only provision that can be effectively applied to require the detention of diseased or revolutionary "through passengers" and prevent them walking the streets of our seacoast cities is Section 10 of the Immigration Act as amended.[18]

---

[18] The petitioner may point to Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924, U. S. C., Title 8, Sec. 145; but that section, like the one with which we are now concerned, speaks of carriers who "bring to the United States" an alien. The sections are *in pari materia*, and undoubtedly the phrase would receive the same construction in each case. Cf. *Dollar S. S. Line* v. *Elting*, 51 F. (2d) 1035, 1036 (C. C. A. 2d).

The petitioner's construction of Section 10 not only leaves us without this essential safeguard, it creates for the "through passenger" a unique exception to an otherwise complete system whereby carriers are penalized if they allow aliens to enter prior to inspection or consent by the immigration authorities. Of course, carriers may be required to detain immigrants and those coming to this country temporarily for business or pleasure. Compare *United States* v. *Steamship Coamo,* 267 U. S. 220. They are also responsible for the unauthorized landing of stowaways, *The Manuel Arnus,* 75 F. (2d) 943 (C. C. A. 2d), certiorari denied, 295 U. S. 756, and (under statutes passed since *Taylor* v. *United States*) of seamen whose detention is requested. Section 20 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 164, replacing Section 32 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 895. Compare *Compagnie Generale Transatlantique* v. *Elting,* 298 U. S. 217. And the reasoning of this Court in *Lloyd Sabaudo Societa* v. *Elting,* 287 U. S. 329, 340,[19] indicates that carriers would be responsible

[19] In that case there was involved Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924 (43 Stat. 166; U. S. C., Title 8, Sec. 145), which penalizes carriers who "bring to the United States" diseased aliens. A vessel of the Lloyd Sabaudo Line carried to New York one Capaldo, who intended to pass in transit through the United States to Canada. Capaldo was in fact diseased, and for carrying him the line was required to pay a fine exacted by the Secretary of Labor.

for failure to detain, pending examination, a passenger who was not coming to the United States to stay here, but who was in transit through American territory to a foreign destination.

We submit that there is no reason to apply a different rule to "through passengers." The demands of such through passengers are neither imperative nor unforeseeable. Unlike sailors, through passengers are not habitually granted shore leave and would not feel restrained if prevented from landing. Moreover, in those cases in which through passengers may ask to get off in port and view the city while the vessel is in the harbor, their request is foreseeable by the carrier. The carrier knows that the possibility of landing exists and may be realized even though the passenger has no immigration visa or passport. See pages 20–22, *supra*. To penalize the carrier who does not detain the "through passenger" until landing permission is given is, therefore, not unreasonable. And such a

---

The carrier brought suit to recover the fine, urging that Capaldo was not "brought" to the United States since both he and the line intended that he should go to Canada. In making this argument the carrier laid particular stress both in the lower courts and in this Court on *Taylor* v. *United States*. See *Lloyd Sabaudo Societa* v. *Elting*, 45 F. (2d) 405, 409 (S. D. N. Y.); s. c. 55 F. (2d) 1048, 1051 (C. C. A. 2d). See briefs in this Court, Oct. Term, 1932, No. 48, Pet.'s Br., p. 49; Resp.'s Br., p. 37. However, this Court sustained the fine, 287 U. S. 329. The reasoning of this Court applies *pari passu* to Section 10 of the Immigration Act of 1917, as amended, which is obviously *in pari materia* with Section 9. See preceding footnote.

penalty is at least as necessary as one placed upon an international bridge company which has not prevented an alien from walking across the bridge into the United States for five minutes. See footnote 2, page 10, *supra*.

The reading of the phrase "bring to the United States" for which the petitioner contends establishes without reason, and in defiance of that administrative simplicity which is essential to expeditious handling of aliens, a preferred classification for through passengers. Moreover, it creates a serious breach in Section 10, and, by parallel reasoning, in Section 9 and other parts of the immigration law. To avoid such consequences, the phrase, even if its literal definition were narrow, should be broadly construed to cover through passengers. We submit that in taking the normal, broad construction, the Circuit Court of Appeals for the Fifth Circuit in this case, and the Circuit Court of Appeals for the Ninth Circuit in *The Nanking,* 290 Fed. 769, 772 (C. C. A. 9th), have reached the only result consistent with the policy of the immigration laws, and that the narrower view taken by the Circuit Court of Appeals for the Second Circuit opens the door whereby a host of aliens may enter without any prior inspection.

II

SECTION 10 OF THE IMMIGRATION ACT OF 1917, AS AMENDED, *IPSO FACTO* IMPOSES A DUTY TO DETAIN, AND NO NOTICE FROM THE IMMIGRATION AUTHORITIES IS REQUIRED AS A CONDITION PRECEDENT TO THE EXISTENCE OF THE OBLIGATION.

In some parts of the immigration law, a carrier or officer is under no duty to detain an alien until he receives from the immigration authorities notice to do so. This, for example, is true of that part of Section 20 (a) of the Immigration Act of 1924 which was considered by this Court at the last term. *Compagnie Generale Transatlantique* v. *Elting*, 298 U. S. 217. See footnote 22 on page 33, *infra*.

But in Section 10 of the Immigration Act of 1917, as amended, the duty is absolute and automatic. The immigration authorities do not need to take any action as a condition precedent to creating an obligation to detain. They do, however, have the power to terminate the obligation since they may permit landing. Thus it may be said that they have the power to loose, but not to bind.

That this is the correct interpretation of Section 10 is shown by its wording, and by its underlying policy.

The statute, without ambiguity, states "That it shall be the duty of * * * officers * * * of vessels * * * bringing an alien to * * * the United States, to prevent the landing of such alien in the United States at any time or place other than

as designated by the immigration officers. Any such person * * * who fails to comply with the foregoing requirements shall * * * be punished." The only requirement is the absolute obligation to prevent the landing, not to obey an order of some administrative official.

Petitioner suggests (Br. 6–7) that the unambiguous words of subsection (a) which we have just quoted mean something different from what they appear to mean on first impression. Petitioner suggests that the duty they prescribe is not a duty to prevent landing, but a duty to present aliens at a particular time and place, and then only if such time and place are designated by immigration officers. To justify so distorted a construction of the plain words of subsection (a), petitioner invokes the aid of subsection (b), which provides that:

> (b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

In the first place, this subsection is of doubtful aid in the construction of subsection (a) because it was not adopted contemporaneously with it. Subsection (a) has a long history, and appears in much its present form in Section 18 of the Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217, Section 10 of the Immigration Act of February 5, 1917, c. 29,

39 Stat. 874, 881, and Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167. On the other hand, subsection (b) did not appear until the 1924 Act. (43 Stat. 168.) In the second place, subsection (b) does not purport to be co-extensive with subsection (a). It is designed merely to furnish a ready method of proof in *one* of a number of situations that may arise under the operation of subsection (a), and not to cover all of them. An obvious example will show that subsection (b) is not co-extensive with and does not set limits to subsection (a). If an immigration inspector saw a ship's master helping an immigrant to disembark before inspection, clearly the inspector's testimony would be enough to sustain a conviction of the master under Section 10, although the inspector had never stopped to issue an order requiring the master to present that alien at some particular time and place.[20]

---

[20] In order to show that the carrier's duty is a duty to present aliens at a particular place when so requested, rather than a duty to detain aliens until otherwise instructed, petitioner also (Br. 7–8) relies on Section 23 of the Act of Feb. 5, 1917, c. 29, 39 Stat. 892, U. S. C., Title 8, Sec. 102, and Section 2 of the Act of March 4, 1929, c. 690, 45 Stat. 1551, U. S. C., Title 8, Sec. 180 (a). The former section is clearly irrelevant. It merely gives to the Commissioner General of Immigration (whose title since Section 14 of Executive Order No. 6166, June 10, 1933, see United States Code *Annotated*, Title 5, Sec. 132, has been changed to the Commissioner of Immigration and Naturalization) the power to make appropriate contracts with railroad carriers so that trains will not be held up at the border but may, while the

The construction for which we contend, i. e., one that imposes an automatic duty to detain until otherwise notified, is required by the policy as well as the language of the statute. If the carrier were under no duty to detain until he received notice, then the carrier could with immunity allow the landing of any alien who moved more quickly than the immigration officials. To allow such a race against authority would cripple the strength of Section 10.[21] We submit that the plain policy of

---

immigration inspectors pass through the cars, proceed into the United States. This is an unusual privilege which, as Section 10 itself recognizes, is an exception to the normal duty of a carrier to detain aliens until otherwise directed, and which, as Section 23 states, is given "so as not unnecessarily to delay, impede, or annoy persons in ordinary travel." Section 2 of the Act of March 4, 1929, is likewise of no value in supporting petitioner's position. This statutory provision, which is obviously not part of the 1917 or 1924 immigration Acts, and is therefore of doubtful aid in construing them, penalizes not carriers but aliens. Moreover, it penalizes an alien not only if he "enters the United States at any time or place other than as designated by immigration officials", but also if he "eludes examination or inspection by immigration officials." In other words, the alien is required to stay out of the United States until he is inspected and until he is told he may enter. Such a requirement parallels the requirement which we say is imposed upon the carrier and is difficult to reconcile with the requirement which petitioner says is imposed upon the carrier.

[21] Furthermore, it would prevent the full application of Section 15 of the Immigration Act of 1917, U. S. C., Title 8, Sec. 151, which declares that "upon the arrival at a port of the United States of any vessel bringing aliens it shall be

the statute is to require the carrier to detain unless and until the authorities have given permission for landing.[22]

III

IF A NOTICE TO DETAIN IS A CONDITION PRECEDENT TO THE EXISTENCE OF A DUTY TO DETAIN, THE NOTICE IN THIS CASE WAS IN PROPER FORM AND PROPERLY SERVED.

In this case the District Court found that notice was "duly served upon the Officers of the Steamship" SANTOS MARU "to hold the alien [Spro-

---

the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens * * *."

[22] We submit that the petitioner is mistaken in contending (Br. 8–9) that our construction of Section 10 of the Immigration Act of 1917 is inconsistent with Section 20 (a) of the Immigration Act of 1924. U. S. C., Title 8, Sec. 167. That section deals with detention of seamen in two different situations. Prior to examination of the seamen by immigration authorities, the carrier has an absolute duty to detain, as this Court seems to have recognized in *Compagnie Generale Transatlantique* v. *Elting*, 298 U. S. 217, 223, line 8. After examination, "A duty so to detain does not arise unless and until such detention is required by the immigration officer." 298 U. S. 223, lines 12–14. The reason for this distinction in Section 20 (a) is obvious and consonant with our argument. Prior to examination, the immigration officials cannot know whether or not they want the alien detained, so an absolute duty rests on the carrier. After the examination, the carrier cannot know its result, but the immigration officials do know. Hence, if they want the alien detained, they, having the information revealed by the examination, must give the carrier notice.

vieri] on board at all ports of the United States at which such Steamship might touch." (R. 7, fdg. b.) The order of detention was violated and "said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law." (R. 8, fdg. c.) In the libel it was charged that the "owners, masters, officers and agents [of the SANTOS MARU] had violated the provisions of Section 146, Title 8, United States Code," i. e., Section 10 of the Immigration Act of 1917, as amended. (R. 4, par. V, lines 4–6.) And for this violation it was prayed that the United States have a decree for its penalty of $1,000 and that the "Santos Maru" be forfeited or sold to satisfy the Government's lien for that penalty. (R. 4, par. VI.)

The petitioner contends (Br. 8–10) that the notice to detain was improper because it required the ship's officers to keep the alien on board and did not name any time or place at which the alien could be landed.

It is our position that the statute does not purport to require that every alien shall have his day in the United States. It is unthinkable that because a leper or anarchist is brought to our shores, we must accommodate him. There is nothing in the language of this particular section that goes so far. Indeed, other provisions of the immigration

laws show that there exists no unqualified right to land even for inspection.[23]

That the right to land even temporarily is a matter within the discretion of the immigration officials is shown not only by the statute but also by Executive Order No. 5426, which we have already quoted at page 21, *supra,* and by Immigration Rule 3, Subdivision H, paragraph 6, quoted at pages 21–22, *supra,* and adopted pursuant to authority conferred by Section 23 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 892, and Section 24 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 166.

Of course, the fact that sometimes, as in *United States* v. *Steamship Coamo,* 267 U. S. 220, relied upon by the petitioner (Br. 9, 13), the immigration authorities do, as a matter of grace, indicate a time and place for landing, does not establish for carriers, as by some sort of prescription, a right always to land all passengers.

Another point, which has not been stressed by the petitioner, seems to us, in view of *Compagnie Generale Transatlantique* v. *Elting,* 298 U. S. 217,

---

[23] Thus in Section 15 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 885, it is provided that immigration officers shall have discretion to examine aliens, either on board the vessel or at land stations to which they are removed. See also Sections 11 and 18, quoted in part and discussed at pages 22–25, *supra.*

to deserve some mention: that is, assuming *arguendo* that a notice of detention is required, the question arises whether it was served upon the party now sought to be charged.

We do not believe that this point is open to the petitioner since in his petition for certiorari he did not set forth any specification of error based upon it, and since his brief does not touch it. *Morehead* v. *People ex rel. Tipaldo,* Oct. Term, 1935, No. 838, June 1, 1936; *Clark* v. *Williard,* 294 U. S. 211, 216. However, if the point were open, we submit it would be without merit. The notice to detain was "duly served upon the Officers of the Steamship." (R. 7, fdg. b.) And this libel proceeding was based on the fact that the "owners, masters, officers and agents had violated the provisions of" Section 10 of the Immigration Act of 1917 as amended. (R. 4, par. V.) Thus the officers of the vessel, who are the ones against whom the penalty is invoked (cf. R. 15, line 2) were given due notice. The situation is unlike that before this Court in the *Compagnie Generale Transatlantique* case, *supra,* where the notice was given to the master, but the duty and the penalty were sought to be imposed upon the owner.

CONCLUSION

Wherefore it is respectfully submitted that the decree of the court below should be affirmed.

STANLEY REED,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
CHARLES E. WYZANSKI, JR.,
Special Assistant to the Attorney General.
WILLIAM W. BARRON,
JOHN M. SULLIVAN,
Attorneys.

BRIEN S. ODEM,
Assistant United States Attorney.
ALBERT E. REITZEL,
Assistant Solicitor of the Department of Labor.
EDWARD J. GARRAHAN,
Attorney.

NOVEMBER 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 224.—October Term, 1936.

Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru", Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Apppeals for the Fifth Circuit.

[February 1, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

Section 10 (a) of the Immigration Act of February 5, 1917, as amended, Title 8 U. S. C. § 146, makes it the duty of every person including owners, masters, officers, and agents of vessels or transportation lines, "bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers." Failure to comply with the provision constitutes a misdemeanor punishable by fine or imprisonment or both. If the Secretary of Labor is of opinion that a prosecution is impracticable or inconvenient, a penalty of $1,000 is imposed and a lien upon the vessel is created for which such vessel shall be libeled in the appropriate United States court.

By subdivision (b) of § 10, proof that the alien failed to present himself at the time and place designated by the immigration officers constitutes *prima facie* evidence that the alien has landed at a time or place other than that designated.

On June 11, 1932, the Santos Maru came into the port of New Orleans with Salvatore Sprovieri, an alien passenger, on board. The passenger was en route from Brazil to Japan upon a through ticket; and was not entitled to enter the United States. On arrival of the steamship, the immigration officers at New Orleans issued a written order to the steamship to hold the alien on board at all ports of the United States at which the ship might touch—the order being duly served upon the officers of the ship. A few days later,

the ship arrived at the port of Galveston, Texas; and there, by the negligence of the ship, its officers and crew, the alien passenger was allowed to escape and land in the United States without permission of the immigration officers and in violation of their order. Officers of the ship notified the immigration authorities of the escape of the passenger; but the ship sailed before his arrest. Subsequently, the passenger was arrested and deported on another vessel of the same line.

The Secretary of Labor was of opinion that it was impracticable and inconvenient to prosecute the matter criminally; and a libel was filed on behalf of the United States in the appropriate federal district court, praying a decree for the $1,000 penalty and to enforce the lien therefor against the ship.

The district court took the view that, the alien passenger not being bound for the United States but en route from Brazil to Japan, the ship was not liable, and dismissed the libel with prejudice. The circuit court of appeals held otherwise, reversed the decree and remanded the cause with instructions to enter a decree for the United States. 84 F. (2d) 482.

The basic contention of petitioner, in its assault upon the latter decree, is that one who transports an alien passenger from one foreign country to another, does not bring him to the United States, within the meaning of § 10, by entering, with the alien on board, an American port of call on the way. If it were not for a sentence contained in the opinion of this court in *Taylor* v. *United States, infra,* of which we shall speak later, we might dispose of this contention by simply saying that it is contrary to the unambiguous terms of the section. Nothing can be plainer than that a ship which enters one of our ports has come to the United States; and a passenger on board obviously has come with the ship, and consequently has been brought by the ship to the United States. And this remains none the less the fact, although the ship continue on her way to a foreign port, and although it was intended that the passenger should go with her, and not be left in the United States. To say that the passenger has not been brought to the United States unless the intent was to leave him here, is not to construe the statute but to add an additional and qualifying term to its provisions. This we are not at liberty to do under the guise

of construction, because, as this court has so often held, where the words are plain there is no room for construction. *United States* v. *Wiltberger,* 5 Wheat. 76, 95-96; *Hamilton* v. *Rathbone,* 175 U. S. 414, 419, 421; *United States* v. *Hartwell,* 6 Wall. 385, 396; *Crooks* v. *Harrelson,* 282 U. S. 55, 59-60.

It is urged that the statute is highly penal in character and should therefore be construed strictly. But the object of all construction, whether of penal or other statutes, is to ascertain the legislative intent; and in penal statutes, as in those of a different character, "if the language be clear, it is conclusive." *United States* v. *Hartwell, supra,* pp. 395-396; *United States* v. *Corbett,* 215 U. S. 233, 242; *Sacramento Nav. Co.* v. *Salz,* 273 U. S. 326, 329-330.

The duty of the ship is to prevent the landing of through alien passengers except by permission. The United States is under no obligation to permit the temporary landing of such passengers at its ports at all. A detention order is not necessary, although one was issued in this instance; for the case is not one where landing is permitted if not forbidden by the immigration officials, but where it is forbidden unless permitted. Section 10 is not like, for example, § 20 of the Immigration Act of 1924, which imposes a fine upon the owner, charterer, agent, consignee, or master of a vessel arriving in the United States who fails, after inspection, to detain an alien seaman employed on the vessel "if required" by the immigration officer in charge of the port to do so. Under that provision, "A duty so to detain does not arise unless and until such detention is required by the immigration officer." *Compagnie Generale* v. *Elting,* 298 U. S. 217, 223. Under § 10, however, the duty is imposed by the statute and not by requirement of the immigration officials. The matter is taken care of by a regulation of the Secretary of Labor (Rule 3, subdivision H, ¶6, "Immigration Laws and Rules of January 1, 1930", p. 125), which provides that through alien passengers "may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage . . ."

The main reliance of petitioner is on *Taylor* v. *United States,* 207 U. S. 120, 124, 125. That case arose under § 18 of the Immigration Act of March 3, 1903, which imposes the duty upon a ship

bringing an alien to the United States to adopt due precautions to prevent the landing of such alien at any time or place other than that designated by the immigration officers. This court held that the provision did not apply "to the ordinary case of a sailor deserting while on shore leave." In the course of the opinion it was said that the phrase "bringing an alien to the United States" meant "transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport." "Intent to leave" is right enough as applied to a seaman on the ship, but it may not be extended to include an alien through passenger.

The court there was dealing with and thinking of a sailor, and not of an alien through passenger; and its language must be read accordingly, for—"It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision." *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 626-627. The point to be observed in the *Taylor* case is that the transportation of the sailor was merely as an "incident to employment on the instrument of transport." That is to say, the sailor was one of the agencies which brought the ship in, rather than an alien brought in by the ship. "It is true", Chief Justice Marshall said in *The Wilson* v. *United States*, 1 Brock. 423, 30 F. Cas. 239, 244, "that a vessel coming into port, is the vehicle which brings in her crew, but we do not in common language say, that the mariners are 'imported,' or brought in by a particular vessel; we rather say they bring in the vessel." The generality of the affirmative phrase, "transporting with intent to leave in the United States," is obviously qualified by the negative form of expression immediately following, "not transporting with intent to carry back and *merely as incident to employment on the instrument of transport.*" (Italics supplied.)

When we consider the relation of the sailor to the ship—that he is, for all practical purposes, a part of it and not, like a passenger, apart from it—it is quite apparent that the word "alien" as used

in § 10 does not, and was not intended to, include an alien sailor. Some of those engaged in the operation of a vessel must go ashore. They may be required to load and unload the cargo, to communicate with the local representatives of the line, and necessarily to perform a variety of duties which require their presence ashore. A denial of the privilege would be so likely to adversely affect commerce as to require much plainer language than we find in § 10 to justify the conclusion that Congress had denied it. To adopt that conclusion would be to declare that the act was violated whenever a member of the crew was sent ashore to perform an act imperatively necessary in the service of the ship.

Petitioner cites, also in support of its contention, *The Alfonso XIII,* 53 F. (2d) 124, 126; *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035; and *The Habana,* 63 F. (2d) 812; but those decisions were expressly based upon what was regarded as the controlling effect of the phrase which we have quoted from the *Taylor* case; and from a reading of the opinions it seems quite evident that but for that the decisions would have been otherwise. For example, Judge Woolsey, in *The Alfonso XIII,* said that if he were dealing with the matter *de novo,* uninstructed by judicial authority above him, he would have found it difficult to give the words "bringing an alien to the United States" a meaning different from what they literally mean.

We reject the notion that in the case with which we are now concerned it is necessary to constitute the act of bringing an alien to the United States that there should be an intent to leave him here.

We see nothing in the suggestion that subdivision (b) of § 10 sustains petitioner's view of the case. That subdivision simply provides a rule of evidence affecting the burden of proof, and we think does not in any way restrict the plain meaning of § 10 (a) as we have found it.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.